[redacted]

In the Supreme Court of the United States

October Term, 1973

No. 72-1816

Federal Power Commission, petitioner

v.

Louisiana Power & Light Company, et al.

No. 72-1848

United Gas Pipe Line Company and
Federal Power Lic., petitioners

v.

Louisiana Power & Light Company

PETITIONS FOR WRITS OF CERTIORARI FILED IN
THE CLERK'S OFFICE FEBRUARY 1, 1973, AND IN
THE CLERK'S OFFICE FEBRUARY 14, 1973.

CERTIORARI GRANTED MARCH 5, 1973.

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October 26	—Petition for declaratory order filed by United in FPC Docket No. RP71-29
December 10	—Order of Commission granting intervention to LP&L in FPC Docket No. CP71-89
December 21	—Hearings commenced in FPC Docket No. RP71-29
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February 22	—Supplemental petition for declaratory order filed by United in FPC Docket No. RP71-29
April 15	—Issuance of Commission Order No. 431
May 14	—Order of Commission granting intervention to LP&L in FPC Docket No. CP71-89
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March 31	—Finding of complaint by LP&L
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April 28	—Motion to intervene, and to dismiss the action filed by Commission
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April 30	—Application filed by LP&L in Court of Appeals for leave to file writs of mandamus and certiorari and, alternatively a motion for expedited appeal
May 1	—Order by Judge Wisdom staying judgment of district court and reinstating temporary restraining order
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1972	
January 14	—Decision of Court of Appeals reversing district court and remanding
March 6	—Order of this court granting writ of certiorari to review decision of Court of Appeals

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

LOUISIANA POWER & LIGHT COMPANY, plaintiff VS. UNITED GAS PIPE LINE COMPANY AND PENNZOIL UNITED, INC., Defendants	CIVIL ACTION NO. 16,637

COMPLAINT

Now comes Louisiana Power & Light Company (LP&L) and for its complaint against the defendants, United Gas Pipe Line Company (United), and Pennzoil United, Inc. (Pennzoil), respectfully alleges:

THE PARTIES

1. Plaintiff, Louisiana Power & Light Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Florida, and having its principal place of business in the State of Louisiana. LP&L is engaged in the generation, transmission, distribution, and sale of electric power and energy throughout 46 of the 64 Parishes in the State of Louisiana, including Ouachita Parish. LP&L operates electric generating plants known as "Sterlington Station" in the Parish of Ouachita near the community of Sterlington, and as "Nine Mile Point Station" in Jefferson Parish, Louisiana.

2. Defendants, United and Pennzoil, are corporations, duly organized and existing under and by virtue of the laws of the State of Delaware, and having their principal places of business in the State of Texas. United is engaged in the transmission of natural gas through transmission lines located in the States of Mississippi, Louisiana, Texas, and northward and eastward into the mid-west and eastern part of the United States. United has been furnishing natural gas to LP&L at both the Nine Mile Point Station and the Sterlington Station for many years under contract. United is a wholly owned subsidiary of Pennzoil.

JURISDICTION

3. It has become necessary for LP&L to bring this action for an injunction and for damages because of the continuing and anticipated breach of contract in the furnishing of natural gas by United directly, and in coordination with and under the inducement, direction and control of Pennzoil. This Court has jurisdiction under 28 U.S.C. § 1332 because this is a civil action in which the matter in controversy exceeds the sum or value of $10,000 and is between citizens of different states.

THE CONTROVERSY

4. Sterlington Station consists of four electric generating units of varying sizes, the smallest being of a capacity of 32,000 kilowatts and the largest 224,000 kilowatts. When these units were constructed between the years 1928 and 1958, the supply of natural gas in North Louisiana was sufficiently abundant so as to obviate any contemplation of securing an alternate source of fuel other than natural gas. The Nine Mile Point Station consists of four electric generating units of varying sizes, the smallest being of a capacity of 74,000 kilowatts and the largest 750,000 kilowatts. There is no alternate source of fuel at the Nine Mile Point Station except for emergencies of not more than 3 days.

5. LP&L has entered into several contracts with United for the supply of natural gas to the Sterlington Station. Those contracts are as follows:

(a) An Agreement dated February 20, 1956, for a term of 20 years, which contract set a maximum daily delivery obligation of not in excess of 25,000 mcf of gas, and which contract contains no hourly limitations. Copy of which contract is annexed hereto as Exhibit "A". That contract further contains an Article IX, entitled "Impairment of Deliveries", which article reads as follows:

"In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers and public utility power plants using gas for generation of electricity which is sold to domestic consumers shall

first be supplied by Seller, and the remaining available gas shall be prorated by Seller among its other consumers."

This said 1956 Agreement was amended on March 29, 1963 and on November 30, 1966, the only amendment relevant to this complaint being the increase in maximum daily delivery obligation from 50,000 mcf up to 55,000 mcf. Then, on December 2, 1969, LP&L and United entered into a further amendment of the 1956 Agreement. The only change wrought by the 1969 amendment relevant to this dispute was the decrease in the maximum daily delivery obligation from 55,000 mcf down to 30,000 mcf during the calendar year 1970. No hourly maximum limitations were stipulated in any of the amendatory agreements of 1963, 1966 and 1969. On August 10, 1970, LP&L agreed to a further amendment setting the daily maximum at 25,000 mcf, effective January 1, 1971.

(b) On December 2, 1969, LP&L and United entered into a Transportation Agreement whereby United agreed to transport for LP&L gas received by United from the Antioch Field for the benefit of LP&L, said gas to be delivered to LP&L at the Sterlington Station through the same meter and intermingled with the gas delivered by United under its 1956 base Agreement with LP&L. The said Transportation Agreement contains no hourly maximum restrictions. Copy of said Agreement is annexed hereto as Exhibit "B".

(c) On May 5, 1967, LP&L and United entered into a "Standby Gas Sales Agreement", which agreement was amended as of December 2, 1969, and which agreement, as amended, provides for no guaranteed deliveries of gas, but for the sale of such gas as United may, in its sole discretion, have available for sale. Copy of said Agreement is annexed hereto as Exhibit "C".

6. LP&L has entered into a contract with United for the supply of natural gas to the Nine Mile Point Station. This contract is as follows:

(a) An Agreement dated May 6, 1968 for a term of 25 years which contract set a maximum daily delivery obligation of not in excess of 80,000 mcf. That contract

further contains an Article IX entitled "Impairment of Deliveries", which article reads as follows:

"Buyer specifically recognizes the fact that Seller delivers gas to gas utilities for resale to domestic consumers and to public utility power plants for generation of electricity which is sold to domestic consumers and to other industrial consumers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers shall first be supplied by Seller and next the gas requirements of public utility power plants (including plant of Buyer) using gas for generation of electricity which is sold to domestic consumers, shall be supplied, and if Seller does not have sufficient gas to supply all of the requirements of said power plants, then said requirements shall be supplied ratably. The remaining available gas supply shall be prorated by Seller among its other consumer."

A copy of said Agreement is annexed hereto as Exhibit "D".

7. United filed an application with the Federal Power Commission (FPC) on October 26, 1970, proposing a curtailment program for most if not all of its customers for the so-called "winter months", i.e., from November 1, 1970 through March 31, 1971. Those being months when the demands for energy in LP&L's system are at low ebb, LP&L joined with most if not all of United's customers in amicably agreeing upon such curtailment program, the effect of which was nil upon LP&L's system capabilities.

8. However, United has now filed a supplemental application with the FPC by which it proposes a further curtailment program, this proposal covering the so-called "summer months", i.e., from April 1, 1971 to October 31, 1971.

9. This said curtailment program proposal by United to commence on April 1, 1971 will affect LP&L's Sterlington and Nine Mile Point Stations by reason of a reduction in gas supplied by United, all in violation of United's delivery obligations and not in accordance with the contract articles on "Impairment of Delivery" quoted above in paragraphs 5 and 6, and in violation of the provisions of its General Gas Tariff Article 12.1, as amended subsequent to the execution of said contracts.

10. United has further advised LP&L that the said proposed curtailment plan, effective April 1, 1971, will result in the curtailment of deliveries of natural gas to Nine Mile Point from the daily maximum agreed upon in the aforesaid contract of 80,000 mcf to an amount between 66,847 mcf and 35,300 mcf, and at Sterlington from the daily maximum agreed upon of 25,000 mcf to between 24,330 and some lesser amount, the exact amount of said curtailments to depend upon the extent of an alleged shortage in the supply of natural gas in the Pennzoil and United system.

11. The curtailment program proposed by United, as described by United, contemplates the curtailing of industrial users, including gas used to general electricity which in turn is supplied to industrial users; then, after all such customers have been curtailed and if there remains an alleged shortage in the United and Pennzoil system, United contemplates curtailing gas used to general electricity consumed by domestic consumers, and after curtailing all power stations, if there remains an alleged shortage, only then would it curtail gas used domestically. (Said program is set forth and attached as Exhibits "E" and "F".)

12. The curtailment program advanced by United described above is in contradiction and defeat of LP&L's rights under its contracts with United. The article on "Impairment of Deliveries" in the Sterlington contract quoted hereinabove provides that LP&L stands first, along with gas utilities selling gas to domestic consumers, in the event of a shortage of gas. Under the contract, only after the public utility power plants and the gas utilities obtained their full gas requirements would there then be gas supplied by United to the consumers, and that supply would be made ratably.

The Nine Mile Point contract "Impairment of Deliveries" provision quoted hereinabove provides that the order of priority in the event of a shortage calls for the gas utilities to be fully supplied first, then the public utility power plants to be fully supplied second, and if there is not enough gas for all of the power plants, then they are to be supplied ratably. Then, thirdly would come the other consumers, and they would be supplied ratably by United. United's curtailment program constitutes and contemplates a significant change, if indeed not a reversal, of priorities of curtailment. United contemplates curtailing industrial

users first, including gas used to generate electricity which in turn is supplied to industrial users; then, if there were still a shortage, United contemplates curtailing gas used to generate electricity which is consumed by domestic consumers. After that curtailment, if there were still a shortage, only then would United curtail gas used by domestic consumers. Additionally, there is no indication of what curtailment United proposes with respect to its own industrial or commercial consumers, or indeed, with any of its other customers of any kind.

13. United has represented to LP&L that the interruptions and curtailments of delivery of natural gas to Sterlington and Nine Mile Point were necessary and will be necessary in order for United to have on the days of proposed interruption and curtailment sufficient gas to supply the needs of its domestic consumers on such days. LP&L has recently been informed by United that said proposed interruptions and curtailments will not be necessary to supply the needs of domestic consumers on the days of such interruptions and curtailments due to any alleged shortage of natural gas on such days in the United and Pennzoil system, but that such interruptions and curtailments will be for the purpose of filling United's underground storage reserves on such days, and of supplying other of United's large industrial customers, some of whom are new customers who have contracted with United for purchase of gas within the last two or three years when United knew it might be faced with a shortage of natural gas.

14. Such proposed curtailments of deliveries of natural gas by United to the Nine Mile Point and Sterlington power plants of LP&L constitute breaches, as alleged above, of the obligations of United under its gas supply contracts with LP&L described hereinabove, and, unless restrained by this Court, United will breach its obligations under such contracts by the proposed additional curtailment program to be instituted by it on April 1, 1971. Similarly, unless restrained by this Court, United's parent company, Pennzoil, will induce, direct and control such breaches of contract.

NECESSITY FOR INJUNCTIVE RELIEF

15. LP&L will suffer immediate and irreparable damage if United is not restrained from breaching and Pennzoil

restrained from inducing the breach of United's contracts to sell and deliver to LP&L the volumes of natural gas that United agreed to sell and deliver in the contracts referred to hereinabove.

16. LP&L has throughout its system serving 46 of 64 Parishes in Louisiana a total of some 340,000 customers, among whom are numbered some of the largest chemical and petro-chemical plants and oil refining and gas processing installations in the entire United States. The generating and transmission system of LP&L is interconnected with the systems of Central Louisiana Electric Company, Gulf States Utilities Company, Southwestern Electric Power Company, and New Orleans Public Service Inc., being all of the other electric utility companies in the State of Louisiana. LP&L also is the supplier of electricity to nine of the thirteen rural electric cooperatives in Louisiana, which cooperatives furnish electric service to some 105,000 consumers throughout the State of Louisiana. LP&L also furnishes electricity by wholesale contract, and by standby and/or emergency agreements to nine municipalities in Louisiana, said municipalities furnishing electric service to some 139,000 consumers. Further, the system of LP&L is interconnected to the systems of Arkansas Power & Light Company, Mississippi Power & Light Company and Mississippi Power Company, and also participates in an electric transmission grid network known as "South Central Electric Companies" consisting of eleven large electric utility companies in the South Central area of the United States furnishing electricity to consumers on the order of 2,870,000, and which network is further interconnected with a power pool that inter-ties the entire electric system of the United States east of the Rocky Mountains with the exception of part of the State of Texas.

17. The curtailment in the quantity of gas furnished by United during peak periods as described hereinabove to LP&L's Nine Mile Point and Sterlington Stations prevents Louisiana Power & Light Company from utilizing the full generating capability of these power stations, resulting in inability to meet the demands upon said stations, the ultimate effect of which can be a "blackout" or "brownout". In an interconnected transmission grid network such as described above there is an element of interdependence of such nature as exposes the members of such network to a

"domino effect" in the event of a blackout at one of the generating stations. Thus, such a blackout or brownout, depending upon the circumstances at the time, such as weather, peak demands, equipment failures, acts of God, and the like, could extend and expand such blackout to cover an area as large as the whole State of Louisiana or, indeed, a several-State area such as occurred during the notorious "Northeast Blackout" in 1965. A blackout of any magnitude would constitute irreparable injury, and would cause damage to LP&L beyond any means of calculation, but would, if only in the slightest degree, be of a magnitude amounting to millions of dollars.

18. Apart from the irreparable injury that may be suffered by LP&L as described above, if the unwarranted breach of contract by United is permitted, LP&L will suffer, until United is enjoined, a present and continuing kind of irreparable injury. Because of LP&L's reliance upon United honoring its contract to furnish gas to Sterlington, LP&L constructed the Sterlington Station without any provisions for the use of an alternative source of energy, oil or other fossil fuel. There is no alternative source of natural gas available to LP&L for the Sterlington Station to utilize the full capacity of the Sterlington Station. Accordingly, the abovesaid curtailment in the supply of gas by United causes an additional irreparable injury to LP&L through the inability by LP&L to fully utilize the generating capability of the Sterlington Station, the loss of which capability is on the order of 60,000 kilowatts, which loss will continue to be suffered so long as United curtails the supply of gas. This loss is irreparable since electricity is a product which cannot be stored and which can be used only when there is demand therefor, and which must be supplied when the demand exists or not at all, and there is no remedy at law for this loss. Further, this loss is irreparable since it consists of a loss of use of money invested in these facilities which is incalculable, but which is substantial in view of the investment in Sterlington Station being on the order of $30,010,000.00, and at Nine Mile Point Station about $84,000,000.00, and there is no remedy at law for this loss.

PRAYER

Accordingly, LP&L invokes the provisions of 28 U.S.C.

§ 1332 as well as this Court's general equity jurisdiction and respectfully requests that the Court:

(a) Issue its temporary restraining order as provided by Rule 65(b) of the Federal Rules of Civil Procedure restraining and enjoining Pennzoil and United from curtailing the supply of gas to the Sterlington and Nine Mile Point generating stations of LP&L in breach of its contracts with LP&L pending a hearing on LP&L's application for preliminary injunction and ordering said companies to deliver natural gas to LP&L in accordance with the provisions of said contracts;

(b) Issue a preliminary injunction in accordance with Rule 65 of the Federal Rules of Civil Procedure restraining and enjoining United and Pennzoil from curtailing the supply of gas to the Sterlington and Nine Mile Point generating stations of LP&L in breach of its contracts with LP&L pending a hearing on LP&L's application for permanent injunction, and ordering said companies to deliver natural gas to LP&L in accordance with the provisions of said contracts;

(c) Issue its permnaent injunction restraining and enjoining United and Pennzoil from curtailing the supply of gas to the Sterlington and Nine Mile Point generating stations of LP&L in breach of its contract with LP&L, and ordering said companies to deliver natural gas to LP&L in accordance with the provisions of said contracts;

(d) Grant such other and further relief at law or in equity as the Court may deem just and proper.

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ATTORNEYS FOR LOUISIANA POWER & LIGHT COMPANY, Plaintiff

VERIFICATION

STATE OF LOUISIANA
PARISH OF ORLEANS

H. L. Deloney, being duly sworn deposes and says that he is a Vice President of Louisiana Power & Light Company, plaintiff herein, and that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

/s/ H. L. Deloney
H. L. Deloney, Vice President

Sworn to and subscribed
before me this 29th day of
March, 1971.

/s/ Eugene G. Taggart
Notary Public

Filed
March 31, 1971

EXHIBIT "A"

THIS AGREEMENT made and entered into this 20th day of February, 1956, by and between UNITED GAS PIPE LINE COMPANY, a Delaware Corporation, hereinafter called "Seller", and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, Buyer is the owner and operator of a power plant consisting of five steam electric generating units located at Sterlington, Louisiana;

WHEREAS, Buyer proposes to construct and operate a sixth steam electric generating unit at said Sterlington, Louisiana, plant site, such unit to be of a nominal rated 200,000 KW output;

WHEREAS, Buyer desires to purchase natural gas from Seller for all the fuel requirements for the operation of Buyer's said proposed Unit No. 6 and Buyer's presently existing Unit No. 5; and

WHEREAS, Seller has a supply of natural gas available for delivery to Buyer and is willing to sell and deliver to Buyer natural gas for such purposes and in the quantities as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained and assumed by each party, the parties hereto covenant and agree as follows:

I.

DEFINITIONS

The following terms, when used in this agreement, shall have the following meaning:

1. The term "day" shall mean a period of 24 consecutive hours beginning as nearly as is practicable at 7:00 A.M. or at such other time as may be mutually agreed to by Buyer and Seller.

2. The term "billing month" shall mean the calendar month.

3. The term "cubic foot of gas," for the purpose of measurement of the gas delivered and for all other purposes, unless otherwise specifically provided, is the amount of gas necessary to fill a cubic foot of space when the gas is at an absolute pressure of fourteen and nine-tenths (14.9)

pounds per square inch and at a base temperature of sixty (60) degrees Fahrenheit.

4. The term "Mcf", which is the sales unit hereunder, shall mean one thousand (1,000) cubic feet of gas.

5. The term "Maximum Daily Delivery Obligation" shall mean the maximum volume of gas which Seller is obligated to deliver to Buyer in any one day.

II.

Quality

The gas deliverable hereunder shall be natural gas as produced in its natural state from the wells, except that Seller may extract or permit the extraction of any of the constituents of said natural gas; provided, that Seller shall not subject said gas nor permit said gas to be subjected to any treatment in the extraction of any of the constituents of said gas which shall substantially change the chemical composition of any of the component parts of said gas. Seller is to tender delivery to Buyer of natural gas which is of merchantable quality only and reasonably free from water and other objectionable liquids, reasonably free from sand and other objectionable solids and which contains not more than forty (40) grains of sulphur or twenty (20) grains of hydrogen sulphide per thousand (1,000) cubic feet.

III.

Measurement

1. Assumed Atmospheric Pressure—The average atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds per square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

2. Orifice Meters—When orifice meters are used for the measurement of gas, the computations of the volumes of gas measured shall be made in accordance with the following subsections (a) to (h), inclusive:

(a) The orifice coefficient for each meter shall be calculated at the base pressure and base temperature set forth in Section 3 of Article I hereof, at a flowing tem-

perature of sixty (60) degrees Fahrenheit and for gas of six hundred thousandths (.600) specific gravity.

(b) The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meter or meters. The average of the record obtained shall be deemed to be the gas temperature for the period under consideration, and the orifice coefficient as calculated in (a) above shall be corrected for each degree variation in the average temperature from sixty (60) degrees Fahrenheit.

(c) The specific gravity of the gas shall be determined by a recording gravitometer so installed that it may record the specific gravity of the gas flowing through the meter or meters; provided, however, if Seller does not consider the installation of such recording gravitometer necessary, Seller shall make spot tests with an Edwards or other standard type specific gravity balance. If the recording gravitometer is used, the average of the record obtained shall be deemed to be the specific gravity of the gas for the period under consideration and the orifice coefficient as calculated in subsection (a) above shall be corrected for each one-thousandth (.001) variation from six hundred thousandths (.600). If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly on a day as near the first (1st) of the billing month as is practicable, or as much oftener as is found necessary in practice. The result obtained from the test made on or near the first (1st) of the billing month shall be deemed to be the specific gravity of the gas during that billing month and the orifice coefficient as calculated in subsection (a) above shall be corrected accordingly for each one-thousandth (.001) variation from six hundred thousandths (.600). Any special test which is made shall be applicable from the day made until the next regular test or other special test is made.

(d) Exact measurements of inside diameters of pipe runs and orifices shall be obtained to the nearest one-thousandth (.001) inch, which measurements shall be used in computations of coefficients.

(e) Pressure taps for meter installation shall be taken from pipe runs two and one-half (2½) inside pipe

diameters upstream and eight (8) inside pipe diameters downstream from the orifice.

(f) All orifice meter computations required in this Section 2 shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931). In the computations of the orifice coefficient, the calculation of "X" shall be carried to six (6) decimals and "C" shall be determined to three (3) decimal places by interpolations from tables on Pages 76 and 77 in Metric Metal Works Bulletin E-2 (Revised 1931). The pressure base, flowing temperature and specific gravity factors used shall consist of four (4) significant figures, unless the first digit is "1", in which case five (5) significant figures shall be used.

(g) In determining the volume of gas delivered through the orifice during a period, either the observation method or the orifice chart integrator shall be used in reading the meter chart. The sum of the extensions obtained from the reading or integration of the meter chart shall be multiplied by the orifice coefficient corrected in accordance with sub-sections (b) and (c) above, to obtain the gas volume for that chart.

(h) The volumes of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:

(1) There shall be determined the average pressure (gauge) at which the gas was delivered during the period under consideration.

(2) The average temperature for the period under consideration shall be determined as provided in sub-section (b) above.

(3) There shall be selected from the table of multipliers, attached hereto and made a part hereof and identified as "Exhibit A", the multiplier corresponding to the average pressure and the average temperature as determined in (1) and (2) above; provided, however, that if at any time the composition of the gas delivered shall have materially changed so that said multipliers are no longer reasonable, Seller shall substitute appropriate multipliers.

(4) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying

the volume of gas determined in the manner hereinabove set forth by the multiplier selected in (3) above.

3. Positive Meters—When positive meters are used for the measurement of gas, the flowing temperature of the gas delivered shall be assumed to be sixty (60) degrees Fahrenheit, and no correction shall be made for any variation therefrom; provided, however, that Seller shall have the option of installing a recording thermometer and if Seller exercises such option and installs such thermometer, correction shall be made for each degree variation in the average flowing temperature for each positive meter chart.

The volumes of gas determined shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:

(a) There shall be determined the average pressure (gauge) at which the gas was metered during the period under consideration.

(b) The average temperature for the period under consideration shall be determined as provided above.

(c) When the flowing temperature of the gas delivered is assumed to be sixty (60) degrees Fahrenheit, there shall be selected from the table of positive meter multipliers, shown in sub-section (e) below, the multiplier corresponding to the average pressure as determined in (a) above; and, when the flowing temperature of the gas delivered be recorded as provided above, the multiplier shall be obtained by squaring the appropriate multiplier selected from the table of said Exhibit "A"; provided, however, that if at any time the composition of the gas delivered shall have materially changed so that said multipliers are no longer reasonable, Seller shall substitute appropriate multipliers.

(d) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas hereinabove determined by the multiplier selected in (c) above.

(e) Boyle's Law Deviation Multipliers for Positive Meters:

AVERAGE PRESSURE PSIG	ASSUMED TEMPERATURE 60° F.
0-49	1.006

50-99	1.016
100-149	1.025
150-199	1.033
200-249	1.042
250-299	1.051
300-349	1.061
350-399	1.070
400-499	1.079
450-499	1.088

4. Determination of Heat Content—The Btu content of the gas delivered, when required to be determined under the provisions of this agreement, shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit, at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch, and at the moisture content of the gas delivered. Such total heating value of the gas delivered shall be determined by Seller, using a Thomas or other standard type calorimeter, either by taking a spot sample or by using a record from a recording calorimeter. The spot sample shall be taken as often as is found necessary in practice, and such sample shall be taken, or the recording calorimeter shall be located at a suitable point on Seller's line so that the heating value of the gas delivered may be obtained. The moisture content of the gas delivered shall be determined at a suitable point by Seller as often as is found necessary in practice.

IV.

Measurement Equipment

1. Ownership and Operation—Seller shall furnish, install, operate and maintain, at its own expense at the point(s) of delivery the meters, instruments and equipment of standard type necessary to measure properly, in accordance with Article III hereof, the gas to be delivered. Seller shall likewise furnish, install, operate and maintain, at its own expense, such instruments and equipment as may be necessary at points other than the point(s) of delivery to obtain the information to measure properly, in accordance with Article III hereof, the gas to be delivered. The metering and other equipment installed, together with any buildings

erected by it for such equipment, shall be and remain the property of Seller.

Whenever facilities of either party, required for or incidental to proper performance under this agreement are located on premises of the other, then to the extent that it may have the right to do so, such party grants to the owner of said facilities, free of charge, the use of the premises so occupied or to be so occupied and the right of free ingress and egress to such premises at all times for the purposes of installation, operation, repair or removal of such facilities.

Either party shall have access to the metering equipment of the other at all reasonable times, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done only by the employees or agents of the owner thereof. Charts and records from such metering equipment shall remain the property of the owner thereof. Upon request of the other party, the requested party will submit its records and charts from its metering equipment, together with calculations therefrom, for the requesting party's inspection and verification, subject to return within ten (10) days after receipt thereof, after which return they shall be kept on file by the owner thereof for the mutual use of both parties for a period of one (1) year.

2. Buyer's Meters—Buyer may, at its option and expense, install and operate meters, instruments and equipment of standard type at or near any point of delivery to check Seller's meters, instruments and equipment, but the measurement of gas delivered shall be by Seller's meters only, except in cases herein provided to the contrary. The meters, instruments and equipment installed by Buyer shall be subject at all reasonable times to inspection or examination by Seller, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done by Buyer.

3. Notice of Meter Tests—Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the test so that the other party may conveniently have its representatives present; provided, however, that if either party has given such notice to the other party and the other party is not

present at the time specified, then the party giving the notice may proceed with the test as though the other party were present.

At least once each thirty (30) days, on a day as near the first (1st) of each month as practical, each party shall calibrate its orifice meters and appurtenant instruments, and at least once each ninety (90) days, on a day as near the first (1st) of the month as practical, each party shall calibrate its positive displacement meters, all in the presence of representatives of the other, as hereinabove provided in this Section, and the parties shall jointly observe any adjustment made.

4. Corrector for Errors of Meters—If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two per cent (2%), registrations thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable, and if not ascertainable, then back one-half of the time elapsed since the last date of calibration. If for any reason, meters are out of service or out of repair, so that the amount of gas delivered cannot be ascertained or computed from the readings thereof, the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(c) By estimating the quantity of delivery by deliveries during preceding period under similar conditions when the meters were registering accurately.

V.

Billings and Payments

1. Billing Date—On or before the tenth (10th) of each calendar month, Seller shall render to Buyer, at such office as Buyer may designate, statements showing the calculation of the monthly bill for gas delivered by Seller to Buyer during the preceding billing month.

2. Payment Date—On or before the twentieth (20th) day of each calendar month Buyer shall make payments to Seller, at such office as Seller may designate, of amounts due Seller as shown by statements furnished Buyer in accordance with the foregoing Section 1.
3. Late Payment—In the event Buyer shall fail to pay any amount due Seller when the same is due, then interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay continues for sixty (60) days, Seller may suspend deliveries of gas, and the exercise of such right shall be in addition to any and all other remedies available to Seller.
4. Error in Bills—In the event an error is discovered in the amount billed in any statement rendered by Seller, such error shall be adjusted promptly.
5. Late Billing—If presentation of a bill to Buyer is delayed after the tenth (10th) day of the month, then the time of payment shall be extended accordingly unless Buyer is responsible for such delay.
6. Access to Billing Data—Buyer and Seller shall have the right to examine the books, records, and charts of the other party at all reasonable times to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any article of this agreement.

VI.

Possession of Gas

Seller shall be in exclusive control and possession of the gas deliverable and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

VII.

Warranty

Seller warrants generally the title to all gas delivered, and agrees to indemnify Buyer from all suits, actions,

debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties or charges thereon.

VIII.

Force Majeure

1. Definition of "Force Majeure"—The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include, (a) in those instances where either Buyer or Seller is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses and, (b) in those instances where either Buyer or Seller is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permission from any governmental agency to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.
2. Limitations on Obligations.—In the event of either Buyer or Seller being rendered unable wholly or in part by force majeure to carry out its obligations under

this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

3. Strikes and Lockouts—The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

IX

Impairment of Deliveries

Buyer specifically recognizes the fact that Seller delivers gas to gas utilities for resale to domestic consumers and to public utility power plants for generation of electricity which is sold to domestic consumers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers and public utility power plants using gas for generation of electricity which is sold to domestic consumers shall first be supplied by Seller, and the remaining available gas shall be prorated by Seller among its other consumers.

X.

Periodic Requirements and Notification of Changes

All gas taken hereunder shall be in equal daily and hourly quantities as nearly as operating conditions will permit.

Buyer and Seller will notify each other from time to time as necessary of expected changes in the rates of daily delivery or takings of gas under this agreement, or in the

pressures or other operating conditions, and the reasons for such expected changes as soon as such reasons come to the knowledge of either Buyer or Seller to the end that the that the other party may be prepared to meet or to take advantage of such expected changes when, as and if they occur.

XI.

Scope and Quantities

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for, natural gas for use in the operation of Buyer's steam electric generating station located near Sterlington, Louisiana, in accordance with the following provisions.

(a) During the period commencing March 26, 1958, and extending to the time that Buyer first places into operation its said proposed new sixth steam electric generating unit, natural gas for all of Buyer's fuel requirements for the operation of its present existing steam electric generating Unit No. 5 up to, but not in excess of 13,000 Mcf of 1,000 Btu per cubic foot gas in any one day, which quantity, unless and until changed as hereinafter provided, shall be the Maximum Daily Delivery Obligation, provided, however, that in the event Buyer should at any time or from time to time require temporary additional daily quantities of gas, over and above the quantities of gas hereinabove provided, for the operation of Buyer's other existing steam electric generating units, Seller shall, to the extent Seller then has excess gas available in its then existing lines over and above the quantities necessary at such time to fulfill Seller's then existing commitments to its other consumers and Seller's requirements for the operation of its facilities, deliver such temporary additional daily quantities of gas to Buyer hereunder.

(b) During the period commencing at the time that Buyer first places into operation its said proposed new steam electric generating unit and continuing thereafter, natural gas for all of Buyer's fuel requirements for the operation of said proposed new Unit No. 6 and said existing Unit No. 5, up to, but not in excess of 50,000 Mcf of

1,000 Btu per cubic foot gas in any one day for said two units, which quantity, unless and until changed as hereinafter provided, shall be the Maximum Daily Delivery Obligation, provided, however, that in the event Buyer should at any time or from time to time require temporary additional daily quantities of gas, over and above the quantities of gas hereinabove provided for, for the operation of Buyer's other existing steam electric generating units, Seller shall, to the extent Seller then has excess gas available in its then existing lines over and above the quantities necessary at such time to fulfill Seller's then existing commitments to its other consumers and Seller's requirements for the operation of its facilities, deliver such temporary additional daily quantities of gas to Buyer hereunder.

If at any time and from time to time during the term hereof, Buyer requires daily quantities of gas in excess of the Maximum Daily Delivery Obligation then in effect, Buyer shall notify Seller in writing, at least twelve (12) months in advance of the daily quantity of gas by which Buyer's requirements will exceed said Maximum Daily Delivery Obligation then in effect, stating in such notice the date on which such increase will occur. Within ninety (90) days after the receipt of such notice, Seller shall elect, and so notify Buyer, whether Seller is agreeable to so increasing said Maximum Daily Delivery Obligation by the amount so requested by Buyer. In the event Seller elects to deliver such additional quantity of gas, the Maximum Daily Delivery Obligation then in effect shall be increased, on the date so specified in said notice, or the first anniversary of the date on which such notice was given, whichever date is the later, by the additional quantity of gas required by Buyer as specified in said notice. In the event Seller does not elect to deliver such additional quantity of gas, Buyer shall thereafter have the right to make other arrangements or agreements for that portion of Buyer's daily requirements which is in excess of the Maximum Daily Delivery Obligation then in effect.

XII.

Delivery Point and Pressure

The gas to be sold and delivered by Seller to Buyer hereunder shall be delivered to Buyer at the outlet side of Seller's metering and regulating station as installed by

Seller on a location mutually agreeable to Seller and Buyer on the site of Buyer's said steam electric generating station at Sterlington, Louisiana.

In the event any of Seller's facilities required to make deliveries of gas to Buyer hereunder are or will be located on the premises of Buyer then, and in such event, Buyer agrees to furnish to Seller, free of charge, the use of the premises so occupied or to be occupied by any of Seller's facilities which may be located on Buyer's premises, with the right of ingress and egress at all times for the purposes of installation, operation, repair and removal of said facilities; such facilities in event of location on Buyer's premises shall be placed at locations mutually agreeable to Buyer and Seller.

The gas to be sold and delivered by Seller to Buyer hereunder shall be delivered at said delivery point at such steady, even pressure as Buyer may designate from time to time; provided, however, that Seller shall never be obligated to maintain a pressure in excess of fifty (50) pounds per square inch gauge.

XIII.

TERM

This agreement shall be for a term commencing on March 26, 1958, at 7:00 A.M. and shall end on April 1, 1978, unless the term of this agreement is altered in accordance with the operation of the provisions of Article XIV and this Article XIII.

It is recognized that, before delivery and receipt of gas for use in said new Unit No. 6 can commence hereunder, Buyer must construct certain facilities, including said steam electric generating unit itself, and Seller must construct certain facilities, including pipe line and other facilities. Buyer agrees that it will proceed with diligence to complete the construction of all its facilities, and further agrees to give Seller at least nine months' prior written notice of the anticipated completion and initial operation of its said Unit No. 6. Seller hereby agrees that it will complete its facilities and be ready to deliver gas for furnace drying and testing purposes at least three months prior to said anticipated completion and initial operation date. In this connection, it is agreed that, if Buyer has not commenced actual construction of its said steam elec-

tric generating unit by January 1, 1957, Seller shall have the right, on and after said January 1, 1957, by written notice to Buyer to immediately terminate this agreement and all the terms and provisions hereof.

XIV

Rates

Subject to the adjustments hereinafter provided, the price to be paid by Buyer to Seller for each Mcf of gas sold and delivered to Buyer hereunder shall be as follows:

(A) For the period commencing on March 26, 1958, and ending on January 1, 1965, the applicable provisions of the following monthly rates set forth in sub-section (a), (b), and (c) shall apply:

(a) MONTHLY RATE

74.5 cents per Mcf when total deliveries are between	0 and 150 Mcf
35.0 cents per Mcf when total deliveries are between	151 and 300 Mcf
32.0 cents per Mcf when total deliveries are between	301 and 1500 Mcf
27.0 cents per Mcf when total deliveries are between	1,501 and 5000 Mcf
25.0 cents per Mcf when total deliveries are between	5,001 and 10000 Mcf
23.0 per Mcf when total deliveries are between	10,000 and 15000 Mcf
20.0 cents per Mcf when total deliveries are between	15,000 and 50000 Mcf
18.0 cents per Mcf when total deliveries are between	50,001 and 150,000 Mcf
17.5 cents per Mcf when total deliveries are between	150,000 Mcf

(b) EXCEPTION

When the quantity of gas delivered by Seller to Buyer during any of the respective months of May, June, July, August and September of any year, exceeds either (i) the Maximum Daily Delivery Obligation then in effect, as set forth in Article XI hereof, times the number of days in the respective billing month; or (ii) the maximum quantity of gas, expressed in Mcf of 1,000 Btu per cubic foot gas, delivered by Seller to

Buyer on any day during the preceding winter period beginning with the month of October and extending through the month of April, times the number of days in the respective billing month, whichever, (i) and (ii), is the greater, then the following rate shall apply to all such excess gas delivered by Seller to Buyer during such respective months of May, June, July, August and September:

14 cents per Mcf for all such gas.

(c) The prices set forth in sub-sections (a) and (b) next above shall be increased or decreased as the case may be by an amount equal to the amount by which the weighted average price payable for all gas purchased by Seller during the monthly period ending on the last day of the second preceding billing month in the Western Region of Seller's system, as outlined on Exhibit "B" attached hereto, exceeds or is less than ten cents; such weighted average price to be expressed in cent per thousand cubic feet at 14.9 pounds per square inch absolute, and otherwise under the conditions of measurement set forth in the various contracts under which Seller purchases such gas; and provided, further, that the maximum amount payable for gas delivered hereunder in any billing month (before making any adjustment for Btu content of such gas) shall never be more than an amount determined by multiplying the maximum volume permitted in the step of the above schedule in which such month's deliveries fall by the price (as adjusted for variation in Seller's cost of gas as above provided) set forth in the step immediately following the step in which the actual total deliveries for such billing month fall. For the purpose of this agreement, the term "weighted average price" shall include, in addition to the cost of the gas itself, all taxes (as hereinafter defined) which may be levied upon and paid by Seller, or which Seller under contractual obligation pays to the party on which such taxes are levied, on or with respect to such gas, prior to the receipt thereof by Seller in its Main Pipe Line System, but shall not include any deductions for compression of such gas and any payments for special service which may be provided for in Seller's gas purchase contracts.

(B) During each of the five-year periods of this agreement, and during the remaining period of this agreement, after the expiration of the period set forth in (A) above, a price determined in the manner hereinafter provided for in this subdivision (B).

At least ninety (90) days prior to the beginning of each such period under consideration Seller shall determine and submit to Buyer for agreements thereto a new monthly rate for the gas deliverable hereunder during the period under consideration. In arriving at such new monthly rate, Seller shall give due consideration to applicable factors and elements of Sellers' estimated costs for the period under consideration, including all costs incident to the acquisition of the gas, transportation costs, cost of additional facilities and other relevant costs and factors, including a reasonable return to Seller, applicable to the determination of rates for gas to be delivered to industrial customers in the rate zone of Seller in which Buyer's plant is located.

Prior to the beginning of said period to which such new monthly rate will apply, Buyer shall notify Seller whether or not it is agreeable to such new monthly rate so determined by Seller. In the event Buyer agrees to such new monthly rate, such rate shall be applicable to all gas delivered hereunder during said period. In the event Buyer does not agree to such new monthly rate, this agreement shall automatically terminate on the date of expiration of the period next preceding the period for which such new monthly rate is applicable.

If this agreement be terminated as provided in the next above paragraph, Buyer shall have the right, in order to give Buyer sufficient time to make any necessary physical changes or other arrangements for its gas requirements, to continue to purchase gas under all of the terms and conditions of this agreement except that the price to be paid for such gas shall be in accordance with said new monthly rate so determined by Seller for the period under consideration and to which monthly rate Buyer did not agree; provided, however, that Buyer shall notify Seller immediately upon the completion of such arrangements for supplying its said requirements, at which time the right granted to Buyer in this paragraph shall terminate and provided, further, that under no conditions shall this right

extend beyond one year from the date this agreement is terminated as hereinabove provided.

Subject to the other provisions hereof, the prices to be paid for gas delivered during each of such periods shall be subject to adjustment for taxes and for variation in the Btu content of the gas as hereinafter provided.

XV.

BTU Adjustment

The price per Mcf for natural gas hereinabove specified in the Monthly Rate is based on gas having a gross heat value of one thousand (1,000) Btu per cubic foot, and shall be adjusted for any variation in the Btu content of such gas as follows:

Should Seller, during any billing month, deliver to Buyer gas containing less or more than one thousand (1,000) Btu per cubic foot, the monthly bill for such gas so delivered during such billing month shall be decreased or increased 0.1% for each Btu below or above an average of one thousand (1,000) Btu per cubic foot, measured in accordance with Article III.

XVI.

Tax Reimbursement

Buyer agrees to reimburse Seller for all taxes which may be levied upon and paid by Seller, or which Seller under contractual or legal obligation pays to the person or company on which such taxes are levied, on or with respect to the gas delivered hereunder; provided, however, that no reimbursement shall be made to Seller under the provisions of this article for any taxes which are included in the weighted average price of gas under the provisions of Article XIV hereof.

The term "taxes" as used herein shall mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value, or sales price of the gas in question; provided, however, that the term "taxes" shall not be deemed to include any general franchise tax

imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation.

XVII.

Contemplated Facilities

Buyer contemplates that it may hereafter construct and operate additional steam electric generating capacity at its Sterlington Plant, or at a new steam electric generating station to be located in North Louisiana. Accordingly, it is hereby agreed that, in the event, prior to January 1, 1970, Buyer (i) constructs and operates additional steam electric generating capacity at Sterlington, or (ii) informs Seller of its decision to construct and operate additional steam electric generating capacity in North Louisiana, Seller and Buyer will supplement and amend the within contract to cover the sale and purchase of gas for the fuel requirements of such additional steam electric generating facilities at Sterlington, or at such new plant located in North Louisiana, up to 50,000 Mcf in any one day, provided that entering into such amendment by Buyer and Seller is conditioned on the following:

(1) Seller and Buyer reaching agreement upon the location of the point of delivery for any such additional daily quantities of gas.

(2) Buyer agreeing to the rates to be paid by Buyer to Seller for any such additional gas which rates shall be those determined by Seller in accordance with later provisions of this article.

Seller and Buyer expressly agree that (a) Buyer will, on or before the commencement of construction of any such new steam electric generating facilities, and in any event, at least 15 months before any such facilities are to be put in operation, give Seller written notice thereof, stating in such notice the definite location of any such new facility, and the daily quantities of gas which Buyer will require for any such additional facility and the date on which deliveries of gas therefor are to commence, and (b) within 90 days from the receipt of such notice from Buyer, Seller shall determine and submit to Buyer for agreement thereto a proposed location for a delivery point for the gas delivered under this contract for such additional facility.

Seller shall also submit to Buyer a rate schedule for the gas to be delivered under this contract for such additional facility during the period covered by such rate schedule. Buyer agrees that, within 30 days from receipt of such proposed location for said delivery point and Seller's rate schedule, it will notify Seller in writing whether or not the proposed delivery point and rate schedule will be agreeable to Buyer. If Buyer agrees to such delivery point and rate schedule, they shall be included in a supplement or amendment to this contract which will be executed by Seller and Buyer.

If Buyer does not, within the aforesaid 30-day period, agree to the proposed delivery point and such rate schedule, the agreement for supplementing and amending the within contract for such purposes shall automatically terminate without prejudice to any of the other provisions of this contract. In the event that the above-mentioned rate schedule submitted by Seller does not cover a period which extends throughout the remainder of the term of this contract and Buyer should agree to such rate schedule, Seller shall, at least 90 days prior to the termination of the period covered by such rate schedule, submit to Buyer a new rate schedule for the gas to be delivered to Buyer's additional facility. Should such new rate schedule not cover a period which extends throughout the remainder of the term of this contract, Seller shall in like manner from time to time throughout the remaining period of this contract submit new rate schedules to Buyer at least 90 days prior to the termination of any rate schedule which is then in effect, it being understood that Buyer shall have a period of 30 days in which to accept or reject any new rate schedule submitted by Seller, and upon Buyer's rejection of any such rate schedule there shall be no further obligation on Seller or Buyer under this contract with respect to delivering or receiving gas for Buyer's said additional facility.

In determining the new rate schedule submitted by Seller to Buyer under the provisions of this Article XVII, Seller shall give due consideration to applicable factors and elements of Seller's estimated costs for the period under consideration, including all costs incident to the acquisition of the gas, transportation costs, cost of additional facilities, and other relevant costs and factors, in-

cluding a reasonable return to Seller, applicable to the determination of rates for gas to be delivered to industrial consumers in the rate zone of Seller in which Buyer's additional facility is located.

XVIII.

DESCRIPTIVE HEADINGS

The descriptive headings of the provisions of this agreement are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provisions.

XIX.

DULY CONSTITUTED AUTHORITIES

This agreement is especially made subject to all present or future valid rules, regulations, or orders of any commission or regulatory body having jurisdiction.

XX.

SUCCESSORS AND ASSIGNS

This agreement shall bind and benefit the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed to two (2) counterparts, each of which shall constitute an original, on the day and year first above written.

WITNESS
(Illegible)
(Illegible)

UNITED GAS PIPE LINE COMPANY
By (Illegible)
Executive Vice President
ATTEST:
(Illegible)
Secretary

WITNESS:
/s/ (Illegible)
(Illegible)

LOUISIANA POWER & LIGHT COMPANY
By (Illegible)
Vice President
ATTEST:
(Illegible)
Secretary

NOTE:
The exhibits A and B attached to the above contract are sent in the original)

THIS AGREEMENT made and entered into this 29th day of March, 1963, by and between UNITED GAS PIPE LINE COMPANY, a Delaware Corporation, hereinafter called "Seller" and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, Seller and Buyer entered into an agreement dated February 20, 1956, covering the sale and purchase of natural gas for use in the operation of Units 5 and 6 of Buyer's steam electric generating station located near Sterlington, Ouachita Parish, Louisiana;

WHEREAS, the above mentioned agreement provides a monthly rate for all gas delivered prior to January 1, 1965;

WHEREAS, Seller and Buyer have agreed to a new rate to be effective for the period prior to January 1, 1970;

WHEREAS, Seller and Buyer desire to amend the above mentioned agreement to incorporate such new rate for the period specified.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto do mutually agree as follows:

1.

Effective on the first day of the month following the date of execution hereof, Article XIV, RATES, shall be changed and amended so that said Article XIV shall thereafter, in its entirety, read as follows:

"XIV"

"RATES"

"(A) During the period ending at 7:00 a.m. on January 1, 1970, the price to be paid by Buyer to Seller for each one million (1,000,000) Btu of gas sold and delivered hereunder shall be twenty-two cents (22 cents).

"The total number of Btu delivered by Seller to Buyer during each billing month shall be determined by multiplying the total volume of gas in Mcf delivered by Seller to

Buyer during each billing month by the average Btu content of the volumes of gas delivered by Seller to Buyer during the billing month in question.

"(B) During the five-year period after the expiration of the period set forth in (A) above, and during the remaining period of this agreement, a price determined in the manner hereinafter provided for in this subdivision (B).

"At least ninety (90) days prior to the beginning of each such period under consideration Seller shall determine and submit in writing to Buyer for agreement thereto a new monthly rate for the gas deliverable hereunder during the period under consideration. In arriving at such new monthly rate, Seller shall give due consideration to applicable factors and elements of Seller's estimated costs for the period under consideration, including all costs incident to the acquisition of the gas, transportation costs, cost of additional facilities and other relevant costs and factors, including a reasonable return to Seller, applicable to the determination of rates for gas to be delivered to industrial customers in the rate zone of Seller in which Buyer's plant is located.

"Prior to the beginning of said period to which such new monthly rate will apply, Buyer shall notify Seller whether or not it is agreeable to such new monthly rate so determined by Seller. In the event Buyer agrees to such new monthly rate, such rate shall be applicable to all gas delivered hereunder during said period. In the event Buyer does not agree to such new monthly rate, this agreement shall automatically terminate on the date of expiration of the period next preceding the period for which such new monthly rate is applicable.

"If this agreement be terminated as provided in the next above paragraph, Buyer shall have the right in order to give Buyer sufficient time to make any necessary physical changes or other arrangements for its gas requirements, to continue to purchase gas under all of the terms and conditions of this agreement except that the price to be paid for such gas shall be in accordance with said new monthly rate so determined by Seller for the period under consideration and to which monthly rate Buyer did not agree; provided, however, that Buyer shall notify Seller immediately upon the completion of such arrangements for

supplying its said requirements, at which time the right granted to Buyer in this paragraph shall terminate and provided, further, that under no conditions shall this right extend beyond one year from the date this agreement is terminated as hereinabove provided.

"(C) It is recognized that Buyer owns and operates additional units in the plant covered hereunder as well as additional power plants, the fuel requirements of which may or may not be supplied by Seller. It is further recognized that Buyer may from time to time install one or more additional power plants or units on its system, and the fuel requirements for such plants or units may or may not be supplied by Seller. It is also recognized that Buyer may have inter-company interchange contracts with affiliated companies, under which agreements Buyer may exchange electricity with such companies and may purchase electricity from or sell electricity to such companies and that such arrangements may from time to time be amended, renewed or extended. It is also recognized that Buyer may from time to time exchange, buy from and sell electricity to other electric generating companies, agencies, or associations.

"Buyer agrees, notwithstanding the receipt by Buyer of quantities of electricity from, or the delivery by Buyer of quantities of electricity to, said parties under said arrangements relating to the sale, exchange or purchase of electricity and/or as a result of the generation of electricity at stations and/or in units (including units at the Sterlington Plant not covered hereunder) not served by Buyer under the provisions of this agreement, to purchase from Seller during the calendar year beginning on January 1, 1963, and ending on December 31, 1963, and during each calendar year thereafter a quantity of gas equal to at least sixty-five per cent (65%) of the maximum quantity of gas purchased by Buyer from Seller during the calendar year ending December 31, 1961"

2.

Effective on the first day of the month following the date of execution hereof, Article XV, BTU ADJUSTMENT, shall be deleted in its entirety and of no further force and effect whatsoever.

3.

Effective on the first day of the month following the date of execution hereof, Article XVI, TAX REIMBURSEMENT, of the above mentioned agreement shall be changed and amended so that said Article shall thereafter, in its entirety, read as follows:

"XVI"

"TAX REIMBURSEMENT"

"Buyer agrees to reimburse Seller for all taxes which may be levied upon and paid by Seller or which Seller under contractual or legal obligation pays to or for the person or company on which such taxes are levied, on or with respect to the gas delivered hereunder; provided, however, that no reimbursement shall be made to Seller under the provisions of this article for such specific taxes as were in effect on January 1, 1963, up to the respective rates thereof on said date which seller was then paying directly or indirectly.

"The term 'taxes' as used herein shall mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term 'taxes' shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation."

4.

Except as herein changed and amended the above mentioned agreement of February 20, 1956, shall remain in full force and effect as written.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2) counterparts, each of which shall constitute an original, on the day and year first above written.

LOUISIANA POWER & LIGHT COMPANY
By: /s/ (Illegible)
Vice President

ATTEST:
/s/ (illegible)
Secretary

UNITED GAS PIPE LINE COMPANY
By: /s/ (Illegible)
Executive Vice President

ATTEST:
/s/ B. M. Byrd
B. M. Byrd Secretary

THIS AGREEMENT made and entered into this 30th day of November, 1966, by and between UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter called "Seller", and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, Seller is presently selling and delivering natural gas to Buyer for use in the operation of Units 5 and 6 of Buyer's steam electric generating station located near Sterlington, Ouachita Parish, Louisiana, under the terms and conditions of that certain agreement between Seller and Buyer dated February 20, 1956, as amended; and

WHEREAS, Seller and Buyer desire to amend the above mentioned agreement with respect to the quantities of gas which Seller is obligated to deliver to Buyer thereunder.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto do mutually agree as follows:

1.

From and after the effective date of this Amendatory Agreement Article XI of the above mentioned agreement of February 20, 1956, as amended, shall be changed and amended so that said Article XI shall in its entirety, thereafter read as follows:

"XI

"SCOPE AND QUANTITIES

"Subject to the term, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from

Seller and pay Seller for, natural gas for all of Buyer's fuel requirements for the operation of its presently existing Unit No. 5 and Unit No. 6, up to, but not in excess of 55,000 Mcf of 1,009 Btu per cubic foot gas in any one day for said two units, which quantity, unless and until changed as hereinafter provided, shall be the Maximum Daily Delivery Obligation, provided, however, that in the event Buyer should at any time or from time to time require temporary additional daily quantities of gas, over and above the quantities of gas hereinabove provided for, for the operation of Buyer's other existing steam electric generating units, Seller shall, to the extent Seller then has excess gas available in its then existing lines over and above the quantities necessary at such time to fulfill Seller's then existing commitments to its other consumers and Seller's requirements for the operation of its facilities, deliver such temporary additional daily quantities of gas to Buyer hereunder.

"If at any time and from time to time during the term hereof, Buyer requires daily quantities of gas in excess of the Maximum Daily Delivery Obligation then in effect, Buyer shall notify Seller in writing, at least twelve (12) months in advance of the daily quantity of gas by which Buyer's requirements will exceed said Maximum Daily Delivery Obligation then in effect, stating in such notice the date on which such increase will occur. Within ninety (90) days after the receipt of such notice, Seller shall elect, and so notify Buyer, whether Seller is agreeable to so increasing said Maximum Daily Delivery Obligation by the amount so requested by Buyer. In the event Seller elects to deliver such additional quantity of gas, the Maximum Daily Delivery Obligation then in effect shall be increased, on the date so specified in said notice, or the first anniversary of the date on which such notice was given, whichever date is the later, by the additional quantity of gas required by Buyer as specified in said notice. In the event Seller does not elect to deliver such additional quantity of gas, Buyer shall thereafter have the right to make other arrangements or agreements for the portion of Buyer's daily requirements which is in excess of the Maximum Daily Delivery Obligation then in effect."

2.

It is recognized that Seller will be required to obtain

regulatory approval before Seller may increase its obligation to deliver quantities of gas in excess of those provided for in Seller's existing Certificate of Public Convenience and Necessity issued by the Federal Power Commission in Docket No. G-13,002. Therefore, this Amendatory Agreement shall become effective upon the date Seller obtains the required regulatory approval. It is agreed that Seller, in filing and pursuing its application for permission to deliver to Buyer the additional quantities of gas herein contemplated, shall have the right to pursue such application and any supplements and amendments thereto in any manner as Seller deems to be in its best interest, and to that end Seller shall be under no obligation to take any further action whatsoever or it may withdraw its application or file whatever pleadings and motions (including motions for dismissal) as Seller deems desirable. In the event Seller does not obtain such permission upon terms and conditions acceptable to Seller or should Seller withdraw its application or file a motion for dismissal thereof, this Amendatory Agreement shall be of no further force or effect whatsoever.

3.

Except as herein specifically changed and amended the above mentioned agreement of February 20, 1956, as amended, shall remain in full force and effect as written.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2) counterparts, each of which shall constitute an original, on the day and year first above written.

WITNESSES:
/s/ B. Porter

UNITED GAS PIPE LINE COMPANY
By /s/ (Illegible)
Exec. Vice President

ATTEST:
(Illegible)

/s/ (Illegible)

LOUISIANA POWER & LIGHT COMPANY
By (Illegible)
Vice President

ATTEST:
(Illegible)
Secretary

EXHIBIT "B"

THIS AGREEMENT made and entered into this 2nd day of December, 1969, by and between LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Louisiana", and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter called "United";

WITNESSETH:

WHEREAS, Louisiana is the owner and operator of a steam electric generating station located at Sterlington, Louisiana;

WHEREAS, Louisiana is presently purchasing all of its natural gas requirements from United;

WHEREAS, Louisiana has advised United that it has purchased a supply of gas in the Antioch Field, Claiborne Parish, Louisiana, from Pan American Petroleum Corporation;

WHEREAS, Louisiana desires United to transport such gas from a point in Claiborne Parish, Louisiana to Louisiana's steam electric generating station at Sterlington, Louisiana; and

WHEREAS, United is willing to transport such gas on the terms and in the quantities hereinafter specifically set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein contained, the parties hereto covenant and agree as follows:

1.

DEFINITIONS

1.1 The following terms, when used in this agreement shall have the following meaning:

a. The term "year" shall mean each calendar year within the term of this agreement.

b. The term "day" shall mean a period of 24 consecutive hours beginning as nearly as is practicable at 7:00 a.m. or at such other time as may be mutually agreed to by Louisiana and United.

c. The term "billing month" shall mean a calendar month.

d. The term "cubic foot of gas", for the purpose of measurement of the gas delivered and for all other purposes, unless otherwise specifically provided, is the amount of gas necessary to fill a cubic foot of space when the gas is at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch and at a temperature of sixty (60) degrees Fahrenheit.

e. The term "Mcf" shall mean one thousand (1,000) cubic feet of gas.

f. The term "Btu" shall mean British thermal unit or units.

g. The term "Transport Gas" shall mean such gas, and only such gas, as Louisiana has purchased from Pan American Petroleum Corporation in the Antioch Field, Claiborne Parish, Louisiana, and will be delivered by Lousisana to United for transportation by United to Louisiana's said steam electric generating station at Sterlington, Louisiana.

2.

SCOPE AND QUANTITY

2.1 Subject to the terms and conditions hereinafter set forth, United agrees to accept and receive for transportation from Louisiana at the hereinafter described delivery point in Claiborne Parish, Louisiana, such gas as Louisiana may have available under its contract with Pan American Petroleum Corporation for delivery to United for transportation from time to time from the Antioch Field and which daily quantities of gas United in its sole discretion will accept for transportation. It is estimated that the average quantities of gas Louisiana may have available will approximate 10,000 Mcf of gas daily. It is agreed, however, that United will, to the extent that Louisiana has such gas available from Pan American Petroleum Corporation in the Antioch Field, receive from and re-deliver to Louisiana a minimum annual volume of 2,500,000 Mcf of gas. It is further agreed that, subject to the other terms and conditions of this agreement, if in any one calendar year Louisiana does not have 2,500,000 Mcf of gas available from Pan American Petroleum Corporation in the Antioch Field for transport, Louisiana will nevertheless

pay United a minimum annual Transportation fee of $25,000.

2.2 United agrees to deliver to Louisiana at the redelivery point on Louisiana's plant site on a monthly basis, subject to reasonable dispatching variations, gas containing total quantities of Btu equal to the total quantities of Btu delivered by Louisiana to United for transportation in accordance with the provisions hereof.

2.3 United agrees that it will accept for transportation from Louisiana each month, varying daily quantities of gas and at the end of such month on arithmetical daily average shall be determined by dividing the total deliveries by Louisiana during such month by the number of days in the succeeding month. In determining what proportion of the gas delivered by United to Louisiana each day shall be Sales Gas and that which shall be Transport Gas, it is agreed that the Transport Gas redelivered by United to Louisiana on each day in any month shall, for the purpose of billing and accounting, be an amount equal to the arithmetical average as determined above and shall be the first gas delivered by United to Louisiana each day.

2.4 It is understood that the Transport Gas delivered to United hereunder will be commingled in United's pipe line with United's own gas or with gas of other parties being transported by United; and it is agreed that the gas which United will redeliver to Lousisana will consist of such commingled gas. Further, it being immaterial (except to the extent provided below with respect to Btu content) to Louisiana from what source United obtains the gas which is delivered to Louisiana at its steam electric generating station, Louisiana hereby agrees that such gas deliverable to Louisiana can be gas from any other source in lieu of all or any part of the Transport Gas delivered by Louisiana to United.

2.5 The Transport Gas to be delivered by Louisiana to United shall have a total heating value of not less than one thousand (1,000) British Thermal Units per cubic foot. The gas to be redelivered hereunder by United to Louisiana shall have approximately the same total heating value of Btu per cubic foot as the gas which is delivered hereunder by Louisiana to United with reasonable variations due to such gas being commingled with other gas in United's lines. It is recognized that United is selling certain quan-

tities of gas to Louisiana under the terms of a Sales Agreement dated February 20, 1956, as amended, and the parties hereto agree that the daily volumes delivered by Louisiana to United and redelivered by United to Louisiana at Sterlington, Louisiana, shall be deducted from the aggregate deliveries of sales gas and transport gas and the remainder shall be sales gas. It is further recognized that deliveries at the point of redelivery will be converted to Btu.

2.6 The total heating value of the gas redelivered by United to Louisiana and Transport Gas delivered by Louisiana to United shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch and at the moisture content of the gas delivered. The degree of saturation by water vapor of the gas delivered shall be determined by United by such methods as may be mutually agreed upon and shall be properly taken into account in determining the total heating value of the gas delivered.

3.

DELIVERY POINTS AND PRESSURES

3.1 The Transport Gas delivered by Louisiana to United hereunder shall be delivered at a mutually agreeable point on United's 20" Sarepta-Sterlington Main Line in Claiborne Parish.

3.2 The Transport Gas delivered by Louisiana to United hereunder shall be delivered at pressures sufficient to enter United's line against the maximum operating pressure of such line at said point of delivery provided that the maximum operating pressure at the point of delivery shall not exceed 500 pounds per square inch gauge.

3.3 The Transport Gas redelivered by United to Louisiana hereunder shall be redelivered at the outlet side of United's existing measuring station at Louisiana's steam electric generating station near Sterlington, Louisiana, through which station United is presently selling gas to Louisiana under the terms and conditions of the contract dated February 20, 1956, as amended.

3.4 The Transport Gas to be redelivered by United to Louisiana hereunder shall be delivered at said delivery

point at such steady, even pressure as Louisiana may designate from time to time; provided, however, that United shall never be obligated to maintain a pressure in excess of fifty (50) pounds per square inch gauge.

3.5 Louisiana will provide the premises to be occupied by the measuring station to be installed by Louisiana as provided in Article 6 hereof and agrees to furnish to United the right of ingress and egress at all times for the purpose of operating any such facilities thereon.

3.6 As between the parties hereto, each will indemnify and hold the other harmless on account of injury to person or damages to property incidental to the handling of the gas while in its possession.

4.

QUALITY

4.1 The Transport Gas delivered by Louisiana to United hereunder and all gas redelivered by United to Louisiana hereunder shall be natural gas as produced in its natural state from the wells except that the parties may extract or permit the extraction of any of the constituents of said natural gas; provided that neither party shall subject said gas nor permit said gas to be subjected to any treatment in the extraction of any of the constituents of said gas which shall substantially change the chemical composition of any of the component parts of the gas. Each party is to tender delivery to the other of natural gas which is of merchantable quality only and reasonably free from water and other objectionable liquids and reasonably free from sand and other objectionable solids and which contains not more than forty (40) grains of sulphur, twenty (20) grains of hydrogen sulphide per thousand (1,000) cubic feet. It is expressly agreed that all Transport Gas delivered by Louisiana into United's line shall not have a water content which is in excess of seven (7) pounds of water per million cubic feet and shall contain a minimum of one thousand (1,000) Btu per cubic foot.

5.

MEASUREMENT

5.1 Assumed Atmospheric Pressure—The average atmospheric pressure shall be assumed to be fourteen and seven-

tenths (14.7) pounds per square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

5.2 Orifice Meters—Orifice meters shall be used for the measurement of gas and the computations of the volumes of gas measured shall be made in accordance with the following sub-sections (a) to (h) inclusive:

(a) The orifice coefficient for each meter shall be calculated at the base pressure and base temperature set forth in Section d. of Article 1. hereof, at a flowing temperature of sixty (60) degrees Fahrenheit and for gas of six-hundred-thousandths (.600) specific gravity.

(b) The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meter or meters. The average of the record obtained shall be deemed to be the gas temperature for the period under consideration, and the orifice coefficient as calculated in (a) above shall be corrected for each degree variation in the average temperature from sixty (60) degrees Fahrenheit.

(c) The specific gravity of the gas shall be determined by a recording gravitometer so installed that it may record the specific gravity of the gas flowing through the meter or meters; provided, however, if Seller does not consider the installation of such recording gravitometer necessary, United shall make spot tests with an Edwards or other standard type specific gravity balance. If the recording gravitometer is used, the average of the record obtained shall be deemed to be the specific gravity of the gas for the period under consideration and the orifice coefficient as calculated in sub-section (a) above shall be corrected for each one-thousandth (.001) variation from six hundred thousandths (.006). If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly on a day as near the first (1st) of the billing month as is practicable, or as much oftener as is found necessary in practice. The result obtained from the test made on or near the first (1st) of the billing month shall be deemed to be the specific gravity of the gas during that billing month and the orifice coefficient as calculated in subsection (a) above shall be corrected accordingly for each one-thousandth (.001) variation from six hundred

thousandths (.600). Any special test which is made shall be applicable from the day made until the next regular test or other special test is made.

(d) Exact measurements of inside diameters of pipe runs and orifices shall be obtained to the nearest one-thousandth (.001) inch, which measurements shall be used in computations of coefficients.

(e) Pressure taps for meter installation shall be taken from pipe runs two and one-half (2½) inside pipe diameters upstream and eight (8) inside pipe diameters downstream from the orifice.

(f) All orifice meter computations required in this Article 5. shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931). In the computations of the orifice coefficient, the calculation of "X" shall be carried to six (6) decimals and "G" shall be determined to three (3) decimal places by interpolations from tables on Pages 76 and 77 in Meric Metal Works Bulletin E-2 (Revised 1931). The pressure base, flowing temperature and specific gravity factors used shall consist of four (4) significant figures; unless the first digit is "1", in which case five (5) significant figures shall be used.

(g) In determining the volume of gas delivered through the orifice during a period, either the observation method or the orifice chart integrator shall be used in reading the meter chart. The sum of the extensions obtained from the reading or integration of the meter chart shall be multiplied by the orifice coefficients, corrected in accordance with subsections (b) and (c) above, to obtain the gas volume for that chart.

(h) The volumes of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's Law, as follows:

(1) There shall be determined the average pressure (gauge) at which the gas was metered during the period under consideration.

(2) The average temperature for the period under consideration shall be determined as provided in subsection (b) above.

(3) There shall be selected from the table of multipliers, attached hereto and made a part hereof and identified as Exhibit "A," the multiplier correspond-

ing to the average pressure and the average temperature as determined in (1) and (2) above; provided, however, that if at any time the composition of the gas delivered shall have materially changed so that said multipliers are no longer reasonable, United shall substitute appropriate multipliers.

(4) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas determined in the manner hereinabove set forth by the multiplier selected in (3) above.

5.3 The Btu content of the Transport gas and of the gas redelivered shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit, at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch, and at the moisture content of the gas delivered. Such total heating value of the gas delivered shall be determined by United using a Thomas or other standard type calorimeter, or a calculated Btu from gas analysis, by taking a spot sample, by using a continuous Btu sample accumulator, or by using a record from a recording calorimeter. The spot sample shall be taken as often as is found necessary in practice, and such sample shall be taken, or the continuous Btu sample accumulator, or the recording calorimeter shall be located at suitable points on United's line so that the heating value of the gas delivered may be obtained. The moisture content of the gas delivered shall be determined at a suitable point by United as often as is found necessary in practice.

6.

MEASUREMENT EQUIPMENT

6.1 Ownership and Operation—Louisiana shall furnish and install to United's specifications and United will operate and maintain, at its own expense at the point of delivery, the meters, instruments and equipment of standard type necessary to measure properly, in accordance with Article 5 hereof, the gas to be transported. The metering and other equipment installed, together with any buildings erected by it for such equipment, shall be and remain the property of Louisiana.

Either party shall have access to the metering equipment

of the other at all reasonable times, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done only by the employees or agents of United. Charts and records from such metering equipment shall remain the property of the owner thereof. Upon request of the other party, the requested party will submit its records and charts from its metering equipment, together with calculations therefrom, for the requesting party's inspection and verification, subject to return within ten (10) days after receipt thereof, after which return they shall be kept on file by the owner thereof for the mutual use of both parties for a period of one (1) year.

6.2 Notice of Meter Tests—United shall give to Louisiana notice of the time of all tests of meters sufficiently in advance of the holding of the tests so that Louisiana may conveniently have its representatives present; provided, however, that if United has given such notice to Louisiana and Louisiana is not present at the time specified, then United may proceed with the test as though Louisiana were present.

United shall keep its and Louisiana's measuring equipment accurate and in repair, making such tests as United may deem necessary, all in the presence of representatives of Louisiana, as hereinabove provided in this article, and the parties shall jointly observe any adjustments which are made to the meters.

6.3 Correction for Errors of Meters—If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two per cent (2%), registrations thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable, and if not ascertainable, then back one-half of the time elapsed since the last date of calibration. If for any reason meters are out of service or out of repair, so that the amount of gas delivered cannot be ascertained or computed from the readings thereof, the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By correcting the error if the percentage of error

is ascertainable by calibration, test or mathematical calculation.

(b) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meters were registering accurately.

7.

BILLINGS AND PAYMENTS

7.1 Billing Date—On or before the tenth (10th) day of each calendar month United shall render to Louisiana, at such office as Louisiana may designate, statements showing the calculation of the monthly bill for gas transported by United for Louisiana during the preceding billing month.

7.2 Payment Date—On or before the twentieth (20th) day of each calendar month Louisiana shall make payments to United, at such office as United may designate, of amounts due United as shown by statements furnished Louisiana in accordance with the foregoing paragraph.

7.3 Late Payment—In the event Louisiana shall fail to pay any amount due United when the same is due, then interest thereon shall accrue at the rate of eight per cent (8%) per annum from the date when such amount is due until the same is paid. If such failure to pay continues for sixty (60) days, United may suspend transportation of gas, and the exercise of such right shall be in addition to any and all other remedies available to United.

7.4 Error in Bills—In the event an error is discovered in the amount billed in any statement rendered by United, such error shall be adjusted promptly.

7.5 Late Billing—If presentation of a bill to Louisiana is delayed after the tenth (10th) day of the month, then the time of payment shall be extended accordingly unless Louisiana is responsible for such delay.

7.6 Access to Billing Data—Louisiana and United shall have the right to examine the books, records and charts of the other party at all reasonable times to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any article of this agreement.

8.

WARRANTY

8.1 Both parties warrant generally the title to all gas delivered, and agree to indemnify each other from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties or charges thereon.

9.

FORCE MAJEURE

9.1 Definition of "Force Majeure"—The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs, tests or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either Louisiana or United is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses and (b) in those instances where either Louisiana or United is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

9.2 Limitations on Obligations—In the event of either Louisiana or United being rendered unable wholly or in part by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

9.3 Strikes and Lockouts—The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

10.

TERM

10.1 This agreement shall be for a term commencing on the date of execution hereof and ending on January 1, 1975.

10.2 The terms and conditions of this agreement shall become operatively effective upon the first date of deliveries of Transport Gas hereunder which date shall be as soon as practicable after the installation of any facilities necessary by either party and both parties are ready to receive and deliver gas hereunder and further subject to the provisions of Article 15.

11.

RATE

11.1 Subject to the conditions of subparagraph 2.1 of Article 2 hereof, the price to be paid by Louisiana to United for all gas delivered to United for transportation hereunder shall be one cent (1 cent) per Mcf of such gas.

12.

TAX REIMBURSEMENT

12.1 Louisiana agrees to reimburse United for all taxes which may be levied upon and paid by United, or which United under contractual or legal obligation pays to the person or company on which such taxes are levied, on or with respect to the gas transported hereunder.

12.2 The term "taxes" as used herein shall mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself, or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "taxes" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation.

13.

NOTIFICATIONS

13.1 Any notice hereunder shall be deemed to be fully given if in writing either sent by postpaid registered or certified mail addressed to the respective parties at the addresses stated below or such other address as they shall, respectively, hereafter designate in writing, or if personally delivered to any officer of the respective parties at said respective addresses:

SELLER: United Gas Pipe Line Company
P. O. Box 1407
Shreveport, Louisiana 71102

BUYER: Louisiana Power & Light Company
142 Delaronde Street
New Orleans, Louisiana 70114

14.

GOVERNMENTAL REGULATORY BODIES

14.1 This agreement is subject to all valid orders, rules and regulations of any State or Federal governmental regulatory body having jurisdiction.

15.

REGULATORY REQUIREMENT

15.1 United and Louisiana agree to proceed with reasonable diligence with the filing and prosecution of applications for such governmental authorizations as may be respectively required of them for the construction of the facilities which each may be required to construct under the provisions hereof and for the transportation of gas hereunder. Each party reserves the right to pursue its applications in such manner as it deems to be in its best interest, including the right to file whatever pleadings and motions it deems desirable. Neither party shall be obligated to accept any authorization which contains, in the opinion of the party receiving such authorization, unreasonable or onerous terms and conditions. In the event that United and Louisiana have not by June 1, 1970, obtained such authorizations upon terms and conditions which are not unreasonable or onerous to the party receiving such authorization, then United or Louisiana shall have the right at any time thereafter, but prior to the parties having been issued such authorizations, to cancel this agreement by giving the other party written notice of such cancellation. Upon such cancellation both parties shall be relieved of any liability hereunder.

16.

DESCRIPTIVE HEADINGS

16.1 The descriptive headings of this agreement are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provisions.

17.

SUCCESSORS AND ASSIGNS

17.1 This agreeement shall bind and benefit the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2)

counterparts, each of which shall constitute an original, on the day and year hereinabove written.

(Signatures are illegible)

EXHIBIT "C"

STANDBY GAS SALES AGREEMENT

THIS AGREEMENT made and entered into this ..... day of ....., 1967, by and between UNITED GAS PIPE LINE COMPANY a Delaware corporation, hereinafter called "Seller," and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, Buyer is the owner and operator of a power plant consisting of six steam electric generating units located at Sterlington, Louisiana;

WHEREAS, Seller is delivering natural gas to Buyer under the terms and conditions of that certain Gas Sales Agreement dated February 20, 1956, as amended from time to time, principally for the operation of Buyer's No. 5 and No. 6 Units in quantities up to 55,000 Mcf of 1,000 Btu per cubic foot gas in any one day;

WHEREAS, Buyer desires to purchase natural gas from Seller in excess of the quantities covered by the above mentioned agreement for the principal purpose of operating Buyer's Units 3 and 4 on a standby or peaking basis;

WHEREAS, Seller has a supply of natural gas available for delivery to Buyer and is willing to sell and deliver to Buyer natural gas for the standby or peaking operations of Buyer's units.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto mutually agree as follows:

I.

DEFINITIONS

The following terms, when used in this agreement, shall have the following meaning:

1. The term "day" shall mean a period of 24 consecutive

hours beginning as nearly as is practicable at 7:00 a.m. or at such other time as may be mutually agreed to by Buyer and Seller.

2. The term "billing month" shall mean the calendar month.

3. The term "cubic foot of gas," for the purpose of measurement of the gas delivered and for all other purposes, unless otherwise specifically provided, is the amount of gas necessary to fill a cubic foot of space when the gas is at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch and at a base temperature of sixty (60) degrees Fahrenheit.

4. The term "Mcf" shall mean one thousand (1,000) cubic feet of gas.

5. The term "Maximum Daily Delivery Obligation" shall mean the maximum volume of gas deliverable by Seller to Buyer hereunder in any one day.

6. The term "Btu" shall mean British Thermal Unit or Units.

II.

QUALITY

The gas deliverable hereunder shall be natural gas as produced in its natural state from the wells, except that Seller may extract or permit the extraction of any of the constituents of said natural gas; provided that Seller shall not subject said gas nor permit said gas to be subjected to any treatment in the extraction of any of the constituents of said gas which shall substantially change the chemical composition of any of the component parts of said gas. Seller is to tender delivery to Buyer of natural gas which is of merchantable quality only and reasonably free from water and other objectionable liquids, reasonably free from sand and other objectionable solids and which contains not more than forty (40) grains of sulphur or twenty (20) grains of hydrogen sulphide per thousand (1,000) cubic feet.

III.

MEASUREMENT

1. Assumed Atmospheric Pressure—The average atmospheric pressure shall be assumed to be fourteen and

seven-tenths (14.7) pounds per square inch, irrespective of actual elevation or locations of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

2. Orifice Meters—When orifice meters are used for the measurement of gas, the computations of the volumes of gas measured shall be made in accordance with the following sub-sections (a) to (h) inclusive:

(a) The orifice coefficient for each meter shall be calculated at the base pressure and base temperature set forth in Section 3 of Article I hereof, at a flowing temperature of sixty (60) degrees Fahrenheit and for gas of six hundred thousandths (.600) specific gravity.

(b) The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meter or meters. The average of the record obtained shall be deemed to be the gas temperature for the period under consideration, and the orifice coefficient as calculated in (a) above shall be corrected for each degree variation in the average temperature from sixty (60) degrees Fahrenheit.

(c) The specific gravity of the gas shall be determined by a recording gravitometer so installed that it may record the specific gravity of the gas flowing through the meter or meters; provided, however, if Seller does not consider the installation of such recording gravitometer necessary, Seller shall make spot tests with an Edwards or other standard type specific gravity balance. If the recording gravitometer is used, the average of the record obtained shall be deemed to be the specific gravity of the gas for the period under consideration and the orifice coefficient as calculated in sub-section (a) above shall be corrected for each one-thousandth (.001) variation from six hundred thousandths (.600). If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly on a day as near the first (1st) of the billing month as is practicable, or as much oftener as is found necessary in practice. The result obtained from the test made on or near the first (1st) of the billing month shall be deemed to be the specific gravity of the gas during that billing month and the orifice coefficient as calculated in sub-section (a) above shall be corrected accordingly for each one-thousandth (.001) variation from

six hundred thousandths (.600). Any special test which is made shall be applicable from the day made until the next regular test or other special test is made.

(d) Exact measurements of inside diameters of pipe runs and orifices shall be obtained to the nearest one-thousandth (.001) inch, which measurements shall be used in computations of coefficients.

(e) Pressure taps for meter installations shall be taken from pipe runs two and one-half (2½) inside pipe diameters upstream and eight (8) inside pipe diameters downstream from the orifice.

(f) All orifice meter computations required in this Section 2 shall be made in accordance with formulae and tables contained in Metric Metal Works Bulletin E-2 (Revised 1931). In the computations of the orifice coefficient, the calculation of "X" shall be carried to six (6) decimals and "C" shall be determined to three (3) decimal places by interpolations from tables on Pages 76 and 77 in Metric Metal Works Bulletin E-2 (Revised 1931). The pressure base, flowing temperature and specific gravity factors used shall consist of four (4) significant figures, unless the first digit is "1," in which case five (5) significant figures shall be used.

(g) In determining the volume of gas delivered through the orifice during a period, either the observation method or the orifice chart integrator shall be used in reading the meter chart. The sum of the extensions obtained from the reading or integration of the meter chart shall be multiplied by the orifice coefficients, corrected in accordance with sub-sections (b) and (c) above, to obtain the gas volume for that chart.

(h) The volume of gas as determined in the manner described above shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:

(1) There shall be determined the average pressure (gauge) at which the gas was metered during the period under consideration.

(2) The average temperature for the period under consideration shall be determined as provided in sub-section (b) above.

(3) There shall be selected from the table of multipliers, attached hereto and made a part hereof and identified as "Exhibit A", the multiplier corresponding to the average

pressure and the average temperature as determined in (1) and (2) above, provided, however, that if at any time the composition of the gas delivered shall have materially changed so that said multipliers are no longer reasonable, Seller shall substitute appropriate multipliers.

(4) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas determined in the manner hereinabove set forth by the multiplier selected in (3) above.

3. Positive Meters—When positive meters are used for the measurement of gas, the flowing temperature of the gas metered shall be assumed to be sixty (60) degrees Fahrenheit, and no correction shall be made for any variation therefrom; provided, however, that Seller shall have the option of installing a recording thermometer, and if Seller exercises such option and installs such thermometer, correction shall be made for each degree variation in the average flowing temperature for each positive meter chart.

The volumes of gas determined shall be adjusted to give effect to the deviation of such gas from Boyle's law, as follows:

(a) There shall be determined the average pressure (gauge) at which the gas was metered during the period under consideration.

(b) The average temperature for the period under consideration shall be determined as provided above.

(c) When the flowing temperature of the gas metered is assumed to be sixty (60) degrees Fahrenheit, there shall be selected from the table of positive meter multipliers, shown in sub-section (e) below, the multiplier corresponding to the average pressure as determined in (a) above; and, when the flowing temperature of the gas metered be recorded as provided above, the multiplier shall be obtained by squaring the appropriate multiplier selected from the table of said Exhibit "A"; provided, however, that if at any time the composition of the gas delivered shall have materially changed so that said multipliers are no longer reasonable, Seller shall substitute appropriate multiplier.

(d) The corrected volume of gas for the period under consideration shall be the result obtained by multiplying the volume of gas hereinabove determined by the multiplier selected in (c) above.

(e) Boyle's Law Deviation Multipliers for Positive Meters:

AVERAGE PRESSURE PSIG	ASSUMED TEMPERATURE 60° F.
0-49	1.006
50-99	1.016
100-149	1.025
150-199	1.033
200-249	1.042
250-299	1.051
300-349	1.061
350-399	1.070
400-449	1.079
450-499	1.088

4. Determination of Heat Content—The Btu content of the gas delivered, when required to be determined under the provisions of this agreement, shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit, at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch, and at the moisture content of the gas delivered. Such total heating value of the gas delivered shall be determined by Seller, using a Thomas or other standard type calorimeter, either by taking a spot sample or by using a record from a recording calorimeter. The spot sample shall be taken as often as is found necessary in practice, and such sample shall be taken, or the recording calorimeter shall be located at a suitable point on Seller's line so that the heating value of the gas delivered may be obtained. The moisture content of the gas delivered shall be determined at a suitable point by Seller as often as is found necessary in practice.

IV.

Measurement Equipment

1. Ownership and Operation—Seller shall furnish, install, operate and maintain, at its own expense at the point(s) of delivery, the meters, instruments and equipment of standard type necessary to measure properly, in accordance with Article III hereof, the gas to be delivered. Seller shall likewise furnish, install, operate and maintain, at its own ex-

pense, such instruments and equipment as may be necessary at points other than the point(s) of delivery to obtain the information to measure properly, in accordance with Article III hereof, the gas to be delivered. The metering and other equipment installed, together with any buildings erected by it for such equipment, shall be and remain the property of Seller.

Either party shall have access to the metering equipment of the other at all reasonable times, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done only by the employees or agents of the owner thereof. Charts and records from such metering equipment shall remain the property of the owner thereof. Upon request of the other party, the requested party will submit its records and charts from its metering equipment, together with calculations therefrom, for the requesting party's inspection and verification, subject to return within ten (10) days after receipt thereof, after which return they shall be kept on file by the owner thereof for the mutual use of both parties for a period of one (1) year.

2. Buyer's Meters—Buyer may, at its option and expense, install and operate meters, instruments and equipment of standard type at or near any point of delivery to check Seller's meters, instruments and equipment, but the measurement of gas delivered shall be by Seller's meters only, except in cases herein provided to the contrary. The meters, instruments and equipment installed by Buyer shall be subject at all reasonable times to inspection or examination by Seller, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done by Buyer.

3. Notice of Meter Tests—Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the test so that the other party may conveniently have its representatives present; provided, however, that if either party has given such notice to the other party and the other party is not present at the time specified, then the party giving the notice may proceed with the test as though the other party were present.

At least once each thirty (30) days, on a day as near the first (1st) of each month as practical, each party shall cali-

brate its orifice meters and appurtenant instruments, and at least once each ninety (90) days, on a day as near the first (1st) of the month as practical, each party shall calibrate the positive displacement meters, all in the presence of representatives of the other, as hereinabove provided in this Section, and the parties shall jointly observe any adjustment made.

4. Correction for Errors of Meters—If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two percent (2%), registrations thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable, and if not ascertainable, then back one-half of the time elapsed since the last date of calibration. If for any reason meters are out of service or out of repair, so that the amount of gas delivered cannot be ascerained or computed from the readings thereof, the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meters were registering accurately.

V.

Billings and Payments

1. Billing Date—On or before the tenth (10th) day of each calendar month Seller shall render to Buyer, at such office as Buyer may designate, statements showing the calculation of the monthly bill for gas delivered by Seller to Buyer during the preceding billing month.

2. Payment Date—On or before the twentieth day of each calendar month Buyer shall make payments to Seller, at such office as Seller may designate, of amounts due Seller

as shown by statements furnished by Buyer in accordance with the foregoing Section 1.

3. Late Payment—In the event Buyer shall fail to pay any amount due Seller when the same is due, then interest thereon shall accrue at the rate of six percent (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay continues for sixty (60) days, Seller may suspend deliveries of gas, and the exercise of such right shall be in addition to any and all other remedies available to Seller.

4. Error in Bills—In the event an eror is discovered in the amount billed in any statement rendered by Seller, such error shall be adjusted promptly.

5. Late Billing—If presentation of a bill to Buyer is delayed after the tenth (10th) day of the month, then the time of payment shall be extended accordingly unless Buyer is responsible for such delay.

6. Access to Billing Data—Buyer and Seller shall have the right to examine the books, records and charts of the other party at all reasonable times to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any article of this agreement.

VI.

Possession of Gas

Seller shall be in exclusive control and possession of the gas deliverable and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

VII.

Warranty

Seller warrants generally the title to all gas delivered, and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties or charges thereon.

VIII.

Force Majeure

1. Definition of "Force Majeure"—The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either Buyer or Seller is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses and (b) in those instances where either Buyer or Seller is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permission from any governmental agency to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

2. Limitations on Obligations—In the event of either Buyer or Seller being rendered unable wholly or in part by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by force majeure, shall be

suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

3. Strikes and Lockouts—The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

IX.

Impairment of Deliveries

Buyer specifically recognizes the fact that Seller delivers gas to gas utilities for resale to domestic consumers and to public utility power plants for generation of electricity which is sold to domestic consumers and to other industrial consumers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers shall first be supplied by Seller and next the gas requirements of public utility power plants (including plant of Buyer) using gas for generation of electricity which is sold to domestic consumers, shall be supplied, and if Seller does not have sufficient gas to supply all of the requirements of said power plants, then said requirements shall be supplied ratably. The remaining available gas supply shall be prorated by Seller among its other consumers.

X.

Periodic Requirements and Notification of Changes

All gas taken hereunder shall be taken in equal daily and hourly quantities as nearly as operating conditions will permit.

Buyer and Seller will notify each other from time to time as necessary of expected changes in the rates of daily delivery or takings of gas under this agreement, or in the pressures or other operating conditions, and the reasons for such expected changes as soon as such reasons come to the knowledge of either Buyer or Seller to the end that the other

party may be prepared to meet or to take advantage of such expected changes when, as and if they occur.

XI.

Scope and Quantities

Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for, natural gas for use in the operation of Buyer's steam electric generating station located near Sterlington, Louisiana, in such quantities as Buyer may require from time to time which are in excess of 55,000 Mcf of 1,000 Btu per cubic foot gas on any day provided, however, that Seller shall not be obligated to deliver to Buyer hereunder on any day more than 16,000 Mcf of 1,000 Btu per cubic foot gas.

It is recognized that Seller will deliver gas to Buyer through the same metering and regulating station that Seller delivers gas to Buyer under the above mentioned agreement of February 20, 1956, as amended, under which agreement Seller is limited to 55,000 Mcf of 1,000 Btu per cubic foot gas on any one day. Further, there is no obligation on Buyer to take any gas hereunder on any day unless the fuel requirements of Buyer's Sterlington plant should exceed 55,000 Mcf of 1,000 Btu per cubic foot gas on such day. It is accordingly agreed that the quantities of gas delivered hereunder on any one day during any period that this agreement and said agreement of February 20, 1956, as amended, are simultaneously effective shall be determined by subtracting fifty-five billion (55,000,000,000) Btu from the total number of Btu delivered by Seller to Buyer at Buyer's Sterlington, Louisiana electric generating station on such day. In the event this agreement is effective for any period that the above mentioned agreement of February 20, 1956, as amended, is not effective, then all gas delivered through the delivery point herein provided for shall be gas delivered under this agreement.

XII.

Delivery Point and Pressure

The gas to be sold and delivered to Buyer hereunder shall be delivered to Buyer at the outlet side of Seller's metering

and regulating station as installed by Seller on the site of Buyer's said steam electric generating station at Sterlington, Louisiana, and through which Seller is presently delivering gas to Buyer under the terms of the above mentioned Gas Sales Agreement dated February 20, 1956, as amended.

Buyer agrees to furnish to Seller, free of charge, the use of the premises occupied or to be occupied by any of Seller's facilities which may be located on Buyer's premises, with the right of ingress and egress at all times for the purposes of installation, operation, repair and removal of said facilities; such facilities located on Buyer's premises shall be placed at locations mutually agreeable to Buyer and Seller.

The gas to be sold and delivered to Buyer hereunder shall be delivered at said delivery point at such steady, even pressure as Buyer may designate from time to time; provided, however, that Seller shall never be obligated to maintain a pressure in excess of fifty (50) pounds per square inch gauge.

XIII.

Term

This agreement shall become effective upon the date of execution hereof and extend to January 1, 1972, at 7:00 a.m., it being understood that deliveries of gas hereunder will not commence until such time as Seller has secured the necessary regulatory authority to commence such deliveries of gas hereunder.

XIV.

Rates

The price to be paid by Buyer to Seller for each one million (1,000,000) Btu of gas sold and delivered hereunder shall be thirty-five cents (35 cents).

The total number of Btu delivered by Seller to Buyer during each billing month shall be determined by multiplying the total volume of gas in Mcf delivered by Seller to Buyer during each billing month by the average Btu content of the volumes of gas delivered by Seller to Buyer during the billing month in question.

XV.

Tax Reimbursement

Buyer agrees to reimburse Seller for all taxes which may be levied upon and paid by Seller or which Seller under contractual or legal obligation pays to or for the person or company on which such taxes are levied on or with respect to the gas delivered hereunder; provided, however, that no reimbursement shall be made to Seller under the provisions of this article for such specific taxes as were in effect on January 1, 1963, up to the respective rates thereof on said date which Seller was then paying directly or indirectly.

The term "taxes" as used herein shall mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "taxes" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation.

XVI.

Duly Constituted Authorities

This agreement is especially made subject to all present or future valid, rules, regulations or orders of any commission or regulatory body having jurisdiction.

XVII.

Descriptive Headings

The descriptive headings of the provisions of this agreement are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any provisions.

XVIII.

Regulatory Requirement

It is recognized that before Seller may make deliveries of gas hereunder, Seller must apply to the Federal Power

Commission for a Certificate of Public Convenience and Necessity, authorizing the delivery of natural gas to Buyer hereunder. It is expressly agreed that Seller in filing and pursuing its said application for a Certificate of Public Convenience and Necessity authorizing Seller to deliver gas hereunder shall have the right to pursue such application in any manner as Seller deems to be in its best interest and to that end Seller shall be under no obligation to take any further action whatsoever after filing such application, and it may withdraw its application or file whatever pleadings and motions (including motions for dismissal) as Seller deems desirable. In the event Seller does not obtain such certificate upon terms and conditions acceptable to Seller, or should Seller withdraw its application for such certificate or file a motion for dismissal thereof, this agreement shall no longer be of any force or effect whatsoever.

XIX.

Successors and Assigns

This contract shall be binding upon and inure to the benefit of the respective heirs, representatives, successors and assigns of the parties hereto.

If all or any part of Buyer's plant, facilities, and/or other property, into which the gas sold hereunder is received and/or utilized, are voluntarily sold or exchanged by Buyer, then and in such event, Buyer agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement, and Buyer further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

If all or any part of Seller's pipe line system through which the gas sold hereunder is delivered to Buyer is voluntarily sold or exchanged by Seller and Seller will thereby be rendered unable to supply to Buyer any gas which it is obligated to supply hereunder, then, and in such event, Seller agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created

by this agreement applicable to the property so sold or exchanged, and Seller further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2) counterparts, each of which shall constitute an original on the day and year first above written.

(Signatures hereto omitted)

* * * * *

THIS AGREEMENT made and entered into this 2nd day of December, 1969, by and between UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter called "Seller" and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer":

WITNESSETH:

WHEREAS, reference is made to the existing Standby Gas Sales Agreement between Buyer and Seller dated May 5, 1967, providing for the deliveries of certain quantities of gas by Seller to Buyer for standby or peaking purposes at Buyer's steam electric generating station located at Sterlington, Louisiana; and

WHEREAS, Buyer and Seller desire to amend said above mentioned Standby Gas Sales Agreement as specifically hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto do mutually agree as follows:

1.

From and after the effective date hereof said above mentioned agreement of May 5, 1967, shall be changed and amended so that the words and figures "fourteen and nine-tenths (14.9)" wherever they appear in said contract shall be changed to read "fourteen and seventy-three hundredths (14.73)".

From and after the effective date hereof Article XI, entitled "Scope and Quantities", shall be changed and

amended so that said Article shall thereafter, in its entirety, read as follows:

"XI.

"SCOPE AND QUANTITIES

"Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller and pay Seller for, natural gas for use in the operation of Buyer's steam electric generating station located near Sterlington, Louisiana, in such quantities as Buyer may require from time to time and which Seller, at its sole discretion, may then have available for sale and delivery to Buyer.

"It is recognized that any gas that Seller may deliver to Buyer hereunder will be delivered to Buyer through the same metering and regulation station through which Seller presently delivers gas to Buyer under the existing agreement between Buyer and Seller dated February 20, 1956, as amended. It is further recognized that as of even date herewith, Seller and Buyer hereunder have entered into an agreement which provides for the transportation of gas by Seller for Buyer in quantities and under the other terms and conditions therein set forth. Accordingly, it is agreed that any quantities of gas delivered hereunder on any one day shall be determined by subtracting the total of, (a) 30,000,000,000 Btu during the year 1970, and 25,000,000,000 Btu during the years 1971 through 1974, inclusive, plus (b), the quantity of gas designated as Transport Gas, if any, (converted to Btu) for such day from, (c) the total number of Btu delivered by Seller to Buyer at Buyer's Sterlington, Louisiana, steam electric generating station on such day."

3.

From and after the effective date hereof Article XIII, entitled "Term", of the above mentioned contract of May 5, 1967, shall be changed and amended so that the date January 1, 1972", appearing therein shall thereafter read "January 1, 1975."

From and after the effective date hereof Article XIV, entitled "Rate", of the above mentioned contract of May 5, 1967, shall be changed and amended so that the words and figures "thirty-five cents (35 cents)", appearing therein shall thereafter read "forty cents (40 cents)."

5.

This agreement is especially made subject to all present or future valid rules, regulations or orders of any commission or regulatory body having jurisdiction.

6.

This Amendatory Agreement shall become effective on the date of execution hereof, however, the provisions hereof shall not become operationally effective until 7:00 a.m. on January 1, 1970.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2) counterparts, each of which shall constitute an original, on the day and year first above written.

(Signatures Illegible)

* * * * *

THIS AGREEMENT made and entered into this 2nd day of December, 1969, by and between UNITED GAS PIPE LINE COMPANY, a Delaware Corporation, hereinafter called "Seller" and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, Seller is presently selling and delivering natural gas to Buyer for use in the operation of Buyer's steam electric generating station located near Sterlington, Ouachita Parish, Louisiana, under the terms and conditions of that certain agreement dated February 20, 1956, as amended;

WHEREAS, the above mentioned agreement, as amended, provides for a new monthly rate to be effective for the five year period beginning January 1, 1970;

WHEREAS, Seller and Buyer have agreed to a new rate for the five year period beginning January 1, 1970; and

WHEREAS, Seller and Buyer desire to amend the above mentioned agreement as heretofore amended with respect to the price to be paid by Buyer to Seller for the five year period beginning January 1, 1970, and with respect to the quantities of gas which Seller is obligated to deliver to Buyer thereunder and to recognize Buyer's other sources of supply through transportation arrangements with Seller and/or others.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto do mutually agree as follows:

1.

From and after the effective dates of this Amendatory Agreement, Article XI of the above mentioned agreement of February 20, 1956, as hereto amended, shall be changed and amended so that Article XI shall in its entirety, thereafter read as follows:

"XI

"SCOPE AND QUANTITIES

"Subject to the terms, conditions and limitations hereof, Seller agrees to sell and deliver or cause to be delivered to Buyer and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas in quantities herein provided, for a portion of Buyer's fuel requirements for the operation of its steam electric generating station, up to, but not in excess of 30,000 Mcf of gas in any one day during the calendar year 1970 and 25,000 Mcf of gas during any one day during the calendar years 1971 through 1974, inclusive. The Billing Demand for the purposes of Article XIV hereof shall be 30,000 Mcf during the calendar year 1970, and 25,000 Mcf during the calendar years 1971 through 1974, inclusive.

"It is recognized that as of even date herewith Seller and Buyer are entering into an agreement under which Seller will transport for Buyer certain quantities of gas to Buyer's said above mentioned steam electric generating station, which transported gas will be delivered by Seller to Buyer through existing delivery facilities of Seller as now located

at Buyer's steam electric generating station located near Sterlington, Louisiana. Seller agrees that it will accept for transportation from Buyer each month, varying daily quantities of gas and at the end of such month an arithmetical daily average shall be determined by dividing the total deliveries by Buyer during such month by the number of days in the succeeding month. In determining what proportion of the gas delivered by Seller to Buyer each day shall be Sales Gas and that which shall be Transport Gas, it is agreed that the Transport Gas redelivered by Seller to Buyer on each day in any month shall, for the purpose of billing and accounting, be an amount equal to the arithmetical average as determined above and shall be the first gas delivered by Seller to Buyer each day."

2.

From and after the effective date of this Amendatory Agreement, the above mentioned agreement of February 20, 1956, as amended shall be further changed and amended so that the words and figures "fourteen and nine-tenths (14.9)" wherever they appear in said contract shall be changed to thereafter read "fourteen and seventy-three hundredths (14.73)".

3.

From and after the effective date of this Amendatory Agreement, Article XIV of the above mentioned agreement of February 20, 1956, as amended, shall be further changed and amended, so that said Article XIV shall thereafter, in its entirety, read as follows:

XIV

"RATES

"A. During the period beginning at 7:00 A.M. on January 1, 1970, and extending to 7:00 A.M. on January 1, 1975, the price to be paid by Buyer to Seller shall consist of a demand charge and a commodity charge as follows:

(a) Demand Charge
Per Mcf of Billing Demand $1.85—per month

(b) Commodity Charge
Per each million Btu contained in the natural gas delivered--21.75 cents, provided, however, during

each subsequent annual period following the period January 1, 1970, to January 1, 1971, the commodity charge shall be increased .50 cents above the price for the next preceding annual period.

"The total number of Btu delivered by Seller to Buyer hereunder during each billing month shall be determined by multiplying the total volume of gas in Mcf delivered by Seller to Buyer during each billing month by the average Btu content of the volumes of gas delivered by Seller to Buyer during the billing month in question, less the volumes of gas transported by Seller for Buyer converted to Btu.

"B. During the remaining period after the expiration of the period set forth in (A) above, a price determined in the manner hereinafter provided for in this subdivision (B).

"At least ninety (90) days prior to the beginning of such remaining period Seller shall determine and submit in writing to Buyer for agreement thereto a new monthly rate for the gas deliverable hereunder during the period under consideration.

"Prior to the beginning of said period to which such new monthly rate will apply, Buyer shall notify Seller whether or not it is agreeable to such new monthly rate so determined by Seller. In the event Buyer agrees to such new monthly rate, such rate shall be applicable to all gas delivered hereunder during said period. In the event Buyer does not agree to such new monthly rate, this agreement shall automatically terminate on the date of expiration of the period next preceding the period for which such new monthly rate is applicable.

"If this agreement be terminated as provided in the next above paragraph, Buyer shall have the right, in order to give Buyer sufficient time to make any necessary physical changes or other arrangements for its gas requirements, to continue to purchase gas under all of the terms and conditions of this agreement except that the price to be paid for such gas shall be in accordance with said new monthly rate so determined by Seller for the period under consideration and to which monthly rate Buyer did not agree; provided, however, that Buyer shall notify Seller immediately upon the completion of such arrangements for supplying its said requirements, at which time the right granted to Buyer in this paragraph shall terminate and provided, further, that

under no conditions shall this right extend beyond one year from the date this agreement is terminated as hereinabove provided."

4.

From and after the effective date of this Amendatory Agreement, the date "January 1, 1963", where it appears in Article XVI, entitled "Tax Reimbursement" of the above mentioned agreement, shall be changed and amended so that said date shall thereafter read "January 1, 1969."

5.

This agreement is especially made subject to all present and future valid rules, regulations and orders of any commission or regulatory body having jurisdiction.

6.

This Amendatory Agreement shall become effective on the date of execution hereof, however, the provisions hereof shall not become operationally effective until 7:00 A.M. on January 1, 1970.

7.

Except as herein changed and amended, the above mentioned agreement of February 20, 1956, as heretofore amended, shall remain in full force and effect as written.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2) counterparts, each of which shall constitute an original, on the day and year first written above.

(Signatures Illegible)

* * * * * * *

EXHIBIT "D"

January 12, 1971

Louisiana Power & Light Company
142 Delaronde Street
New Orleans, Louisiana 70114

Gentlemen:

Please refer to that certain contract dated May 6, 1968, under which we are selling gas to you for the requirements

of your Ninemile Point Plant located near Westwego, Louisiana.

As you are aware, our deliveries to you have been and continue to be reduced under the provisions of the Impairment of Deliveries clause in the above mentioned contract.

Beginning January 6, 1971, certain of our suppliers, due to the breakdown in main line compressors, freezing of wells and operating problems in laterals or treating plants, resulting from or aggravated by the severe cold weather required their invoking the "force majeure" provision of the contracts under which they were delivering to us.

This likewise resulted in a "force Majeure" condition under the terms of the above mentioned contract between you and United Gas Pipe Line Company and we are marking our records accordingly.

We will advise you at such time as these "force majeure" conditions have been remedied.

Yours very truly,

UNITED GAS PIPE LINE COMPANY
/s/ V. S. Brennan
V. S. Brennan
Vice President

* * * * *

August 24, 1970

Mr. Donald L. Aswell
Louisiana Power & Light Company
142 Delaronde Street
New Orleans, Louisiana 70114

Dear Mr. Aswell:

In the meeting you and your Mr. Lee B. Maurin had with our Mr. M. J. Goodwill on July 15, 1970, you raised certain questions pertinent to the anticipated curtailment by United of deliveries of gas to your Ninemile Point Power Plant during the coming winter.

To the extent that United curtails deliveries of gas to your Ninemile Point Power Plant, you have the right to utilize any substitute fuel from any source available up to the Btu content equivalent of the volumes curtailed by United.

Further, Louisiana Power & Light Company will not be obligated at a later time to take gas from United Gas Pipeline Company at rates higher than one-third of the total fuel requirements of your Ninemile Point Power Plant after Unit No. 4 is in commercial operation and United's obligation is limited to one-third of your total fuel requirement.

Trusting that this gives you the information desired, I am

Sincerely,
/s/ V. S. Brennan

* * * * *

April 17, 1968

Mr. H. L. Deloney, Vice President
Louisiana Power & Light Company
142 Delaronde Street
New Orleans, Louisiana 70114

Dear Mr. Deloney:

Thank you for your letter of April 11, 1968, relating to the Ninemile Point Fuel Contract and particularly to the Force Majeure provisions thereof we have heretofore discussed.

This letter will confirm to you that when the necessity for making other than emergency repairs or alterations to machinery or to our lines of pipe arises, we will give you seventy-two (72) hours advance notice of our plans.

We will, of course, cooperate with you to the extent possible to attempt to avoid imposing an undue burden on your operating situation.

Sincerely,
/s/ V. S. Brennan
Vice President

* * * * *

MEMORANDUM FOR FILE

May 1, 1968

SUBJECT: NINEMILE POINT GAS PURCHASE CONTRACTS—UNITED GAS PIPELINE CORPORATION AND TEXACO, INC.
MAY 1, 1968

In all recent conversations and negotiations with United

Gas Pipeline Company and Texaco, it has been thoroughly understood by Mr. Lewis, Mr. Rodrigue, Mr. Deloney and I that there is no question in anyone's mind, including United and Texaco, that the contracts about to be signed refer only to gas supply for units 1, 2, 3, and 4 at Ninemile Point. Any further additions to this plant will be subject to negotiations with any gas supplier at any time by Louisiana Power & Light Company. Both the previously referred to contracts were negotiated in an open manner on this basis with United Gas and Texaco.

The above refers especially to the United Gas Contract page 12, Article XI, section (ii) wherein "said Ninemile Point Power Plant" as used in this paragraph means only units 1, 2, 3, and 4. This has been discussed thoroughly with Mr. V. S. Brennan and Tom Ross of United Gas and they concurred in this meaning.

/s/ Don Aswell

* * * * *

May 8, 1968
Mr. W. H. Talbot
Secretarial Dept.

Dear Bill:

NINEMILE POINT—
UNITED GAS PIPE LINE COMPANY
GAS CONTRACT

We are attaching executed contract with United Gas Pipe Line Company dated May 6, 1968, covering thirty-three and one-third per cent (33⅓%) of the fuel energy requirements for the Ninemile Point steam-electric station which goes into effect when Ninemile 4 generating unit goes into operation.

Please place this document on file.

Yours very truly,
H. L. Deloney

* * * * *

May 6, 1968

Mr. H. L. Deloney
Vice President-Engineering
Louisiana Power & Light Company
142 Delaronde Street
New Orleans, Louisiana 70114

Dear Mr. Deloney:

Thank you for your letter of May 2, 1968, with which you sent us two executed duplicate originals of the new fuel supply contract for your Ninemile Point Power Plant. One duplicate original executed by us is being returned to you herewith. If you need additional copies don't hesitate to let us know.

We are indeed pleased that we have finally consummated this new contract, and I want to express my appreciation to you and your associates on your consideration throughout our negotiations.

With best regards, I am

Sincerely,
/s/ V. S. Brennan
V. S. Brennan
Vice President

• • • • •

THIS AGREEMENT made and entered into this 6th day of May, 1968, by and between UNITED GAS PIPE LINE COMPANY, a Delaware corporation, hereinafter called "Seller", and LOUISIANA POWER & LIGHT COMPANY, a Florida corporation, hereinafter called "Buyer";

WITNESSETH:

WHEREAS, on August 6, 1962, Buyer and Seller entered into an agreement relating to, among other things, the sale by Seller and purchase by Buyer of natural gas for the fuel requirements of Buyer's steam electric generating station located at Ninemile Point (hereinafter referred to as Ninemile Point Power Plant) near the Town of Westwego, Jefferson Parish, Louisiana, which said agreement has been heretofore amended from time to time;

WHEREAS, it is recognized that as of September 30, 1958,

Buyer assigned unto Louisiana Gas Service Company all its interest in said contract relating to the purchase of gas for resale and distribution in the New Orleans, Louisiana Area retaining to Buyer that portion of the contract relating to the sale by Seller hereunder and the purchase by Buyer of gas for use by Buyer in the operation of its aforesaid Ninemile Point Power Plant; and

WHEREAS, Buyer and Seller have reached agreement on the extension of the term of the contract and of the quantities to be sold and delivered thereunder and desire to terminate said agreement of August 6, 1952, and to enter into the within agreement under all of the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto do mutually agree as follows:

I.

DEFINITIONS

The following terms, when used in this agreement shall have the following meaning:

1. The term "day" shall mean a period of 24 consecutive hours beginning as nearly as is practicable at 7:00 a.m. or at such other time as may be mutually agreed to by Buyer and Seller.

2. The term "billing month" shall mean the calendar month.

3. The term "cubic foot of gas", for the purpose of measurement of the gas delivered and for all other purposes, unless otherwise specifically provided, is the amount of gas necessary to fill a cubic foot of space when the gas is at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch and at a base temperature of sixty (60) degrees Fahrenheit.

4. The term "Mcf" shall mean one thousand (1,000) cubic feet of gas.

5. The term "Btu" shall mean British Thermal Unit or units.

6. The term "Maximum Daily Delivery Obligation" shall mean the maximum volume of gas deliverable by Seller to Buyer hereunder in any one day.

II.

Quality

The gas deliverable hereunder shall be natural gas as produced in its natural state from the wells, except that Seller may extract or permit the extraction of any of the constituents of said natural gas; provided that Seller shall not subject said gas nor permit said gas to be subjected to any treatment in the extraction of any of the constituents of said gas which shall substantially change the chemical composition of any of the component parts of said gas. Seller is to tender delivery to Buyer of natural gas which is of merchantable quality only and reasonably free from water and other objectionable liquids, reasonably free from sand and other objectionable solids and which contains not more than forty (40) grains of sulphur or twenty (20) grains of hydrogen sulphide per thousand (1,000) cubic feet.

III.

Measurement

1. Assumed Atmospheric Pressure—The average atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds per square inch.
2. Orifice Meters shall be used for the measurement of gas. Orifice meters shall be constructed and installed, and the computations of volume made, in accordance with the provisions of Gas Measurement Committee Report No. 3 of the American Gas Association as reprinted January, 1956, with any subsequent amendments or revisions which may be mutually acceptable.

The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meters. The average of the record to the nearest one (1) degree Fahrenheit, obtained while gas is being delivered, shall be the applicable flowing gas temperature for the period under consideration.

The specific gravity of the gas shall be determined by a recording gravitometer so installed that it may record the specific gravity of the gas flowing through the meter or meters; provided, however, if Seller does not consider the installation of such recording gravitometer necessary,

Seller shall make spot tests with an Edwards or other standard type specific gravity balance. If the recording gravitometer is used, the average of the record to the nearest one-thousandth (0.001), obtained while gas is being delivered, shall be the applicable specific gravity of the gas for the period under consideration. If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly, the result obtained, to the nearest one-thousandth (0.001), to be applicable during the succeeding billing month.

Adjustment for the effect of supercompressibility shall be made according to the provisions of A.G.A. Report No. 3, hereinabove identified, for the average conditions of pressure, flowing temperature and specific gravity at which the gas was measured during the period under consideration, and with the proportionate values of, each, carbon dioxide and nitrogen in the gas delivered included in the computation of the applicable supercompressibility factors. Seller shall obtain appropriate carbon dioxide and nitrogen fraction values as may be required from time to time.

3. Determination of Heat Content—The Btu content of the gas delivered shall be determined for a cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit, at an absolute pressure of fourteen and nine-tenths (14.9) pounds per square inch, and at the moisture content of the gas delivered. Such total heating value of the gas delivered shall be determined by Buyer, using a Thomas or other standard type calorimeter. The moisture content of the gas delivered shall be determined at a suitable point by Buyer as often as found necessary in practice.

IV.

Measurement Equipment

1. Ownership and Operation—Seller shall furnish, install, operate and maintain, at its own expense at the point of delivery, the meters, instruments and equipment of standard type necessary to measure properly, in accordance with Article III hereof, the gas to be delivered. Seller shall likewise furnish, install, operate and maintain, at its own expense, such instruments and equipment as may be necessary at points other than the point of delivery to obtain the information to measure properly, in accordance with

Article III hereof, the gas to be delivered. The metering and other equipment installed by Seller, together with any buildings erected by it for such equipment, shall be and remain the property of Seller.

Either party shall have access to the metering equipment of the other at all reasonable times, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done only by the employees or agents of the owner thereof. Charts and records from such metering equipment shall remain the property of the owner thereof. Upon request of the other party, the requested party will submit its records and charts from its metering equipment, together with calculations therefrom, for the requesting party's inspection and verification, subject to return within ten (10) days after receipt thereof, after which return they shall be kept on file by the owner thereof for the mutual use of both parties for a period of one (1) year.

2. Buyer's Meters—Buyer may, at its option and expense, install and operate meters, instruments and equipment of standard type at or near any point of delivery to check Seller's meters, instruments and equipment, but the measurement of gas delivered shall be by Seller's meters only, except in cases herein provided to the contrary. The meters, instruments and equipment installed by Buyer shall be subject at all reasonable times to inspection or examination by Seller, but the reading, calibration and adjustment thereof and changing of charts (unless otherwise mutually agreed upon) shall be done by Buyer.

3. Notice of Meter Tests—Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the test so that the other party may conveniently have its representatives present; provided, however, that if either party has given such notice to the other party and the other party is not present at the time specified, then the party giving the notice may proceed with the test as though the other party were present.

At least once each thirty (30) days, on a day as near the first (1st) of each month as practical, each party shall calibrate its orifice meters and appurtenant instruments, all in the presence of representatives of the other, as hereinabove provided in this Section, and the parties shall jointly observe any adjustment made.

4. Correction for Errors of Meters—If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two per cent (2%), registrations thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable, and if not ascertainable, then back one-half of the time elapsed since the last date of calibration. If for any reason meters are out of service or out of repair, so that the amount of gas delivered cannot be ascertained or computed from the readings thereof the gas delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering.

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation.

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meters were registering accurately.

V.

Billings and Payments

1. Billing Date—On or before the fifteenth (15th) day of each calendar month Seller shall render to Buyer, at such office as Buyer may designate, statements showing the calculation of the monthly bill for gas delivered by Seller to Buyer during the preceding billing month.

2. Payment Date—On or before the twenty-fifth (25th) day of each calendar month Buyer shall make payments to Seller, at such office as Seller may designate, of amounts due Seller as shown by statements furnished Buyer in accordance with the foregoing Section 1.

3. Late Payment—In the event Buyer shall fail to pay any amount due Seller when the same is due, then interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such amount is due until the same is paid. If such failure to pay continues for sixty (60) days, Seller may suspend deliveries of gas, and the exercise

of such right shall be in addition to any and all other remedies available to Seller.

4. Error in Bills—In the event an error is discovered in the amount billed in any statement rendered by Seller, such error shall be adjusted promptly.

5. Late Billing—If presentation of a bill to Buyer is delayed after the fifteenth (15th) day of the month, then the time of payment shall be extended accordingly unless Buyer is responsible for such delay.

6. Access to Billing Data—Buyer and Seller shall have the right to examine the books, records and charts of the other party at all reasonable times to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any article of this agreement.

VI.

Possession of Gas

Seller shall be in exclusive control and possession of the gas deliverable and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be in exclusive control and possession thereof and responsible for any injury or damage caused thereby, except damage which occurs by reason of Seller's failure to deliver gas of the quality required by this contract.

VII.

Warranty

Seller warrants generally the title to all gas delivered, and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties or charges thereon.

VIII.

Force Majeure

1. Definition of "Force Majeure"—The term "force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public

enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either Buyer or Seller is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses and (b) in those instances where either Buyer or Seller is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations under this agreement, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies permits and permissions.

2. Limitations on Obligations.—In the event of either Buyer or Seller being rendered unable wholly or in part by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

3. Strikes and Lockouts.—The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirements that any force majeure shall be remedied with all reasonable dis-

patch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

IX.

Impairment of Deliveries

Buyer specifically recognizes the fact that Seller delivers gas to gas utilities for resale to domestic consumers and to public utility power plants for generation of electricity which is sold to domestic consumers and to other industrial consumers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers shall first be supplied by Seller and next the gas requirements of public utility power plants (including plant of Buyer) using gas for generation of electricity which is sold to domestic consumers, shall be supplied, and if Seller does not have sufficient gas to supply all of the requirements of said power plants, then said requirements shall be supplied ratably. The remaining available gas supply shall be prorated by Seller among its other consumers.

X.

Periodic Requirements and Notification of Changes

All gas taken hereunder shall be taken in equal daily and hourly quantities as nearly as operating conditions will permit.

Buyer and Seller will notify each other from time to time as necessary of expected changes in the rates of daily delivery or takings of gas under this agreement, or in the pressures or other operating conditions, and the reasons for such expected changes as soon as such reasons come to the knowledge of either Buyer or Seller to the end that the other party may be prepared to meet or to take advantage of such expected changes when, as and if they occur.

XI.

Scope and Quantity

Subject to the terms, conditions and limitations hereof,

Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller and pay Seller for natural gas, up to the quantities hereinafter provided, for the fuel requirements of Units 1, 2, 3 and 4 at Buyer's Ninemile Point Power Plant located at Westwego, Louisiana:

(1) From the effective date hereof and extending to the time that Buyer places its new 750,000 KW Unit No. 4 into conventional commercial operations, which date Buyer estimates to be January 1, 1971, all of Buyer's fuel requirements for the operation of Buyer's said Ninemile Point Units 1, 2 and 3, not to exceed 125,000 Mcf of 1,000 Btu per cubic foot gas in any one day which quantity, until reduced as hereinafter provided, shall be the Maximum Daily Delivery Obligation.

(ii) During the period beginning on the date that Buyer places its new 750,000 KW Unit No. 4 into conventional commercial operation 33-⅓% of the fuel requirements of Buyer's said Ninemile Point Power Plant, not however, to exceed 80,000 Mcf of 1,000 Btu per cubic foot gas in any one day which quantity shall thereafter be the Maximum Daily Delivery Obligation.

It is understood that in making deliveries of gas under this agreement, Seller shall never be required to deliver in any one hour more than 1/24th of the Maximum Daily Delivery Obligation then in effect.

It is recognized that the remaining fuel requirements, after Buyer places into conventional commercial operation its new Unit No. 4, will be supplied from a source other than Seller. Buyer agrees that it will at all times use its best efforts to receive gas simultaneously from Seller and from Buyer's other source of supply in quantities equal to the percentage of Buyer's total daily requirements then being furnished by each respective source of supply. In taking such quantities of gas Buyer will use its best efforts to receive gas from Seller and its other source of supply at all times at the operating load factor of Buyer's said Nine Mile Point Units 1, 2, 3, and 4.

It is recognized by the parties hereto that for a period of time following completion of construction of said new 750,000 KW Unit No. 4 the gas used by said unit will be for the purpose of testing and drying out such unit. Accordingly, Buyer shall advise Seller of the date when it places said unit into conventional commercial operation for

the express purpose of setting the date when the decreased Maximum Daily Delivery Obligation will become effective.

XII.

DELIVERY POINT AND PRESSURE

The gas to be sold and delivered to Buyer hereunder shall be delivered to Buyer at the outlet side of the presently existing metering and regulating station located on a tract of land adjacent to Buyer's Nine Mile Point Power Plant in Section 5, Township 13 South, Range 22 East Jefferson Parish, Louisiana.

The gas to be delivered hereunder shall be delivered at said point of delivery at such pressures as Buyer may require not to exceed 125 pounds per square inch gauge.

XIII.

TERM

This agreement shall become effective on the first day of the month following the date of execution hereof and extend to January 1, 1993.

XIV.

RATES

The price for all gas delivered by Seller to Buyer hereunder shall be as follows:

(A) During the period commencing on the effective date hereof, as set out in Article XIII, and ending at 7:00 A.M. on June 1, 1970, twenty and forty-one hundredths cents (20.41 cents) for each one million (1,000,000) Btu.

(B) During the period commencing at 7:00 A.M. on June 1, 1970, and ending at 7:00 A.M. on April 1, 1973, twenty-one and thirty four hundredths cents (21.34 cents) for each one million (1,000,000) Btu.

(C) During the period commencing at 7:00 A.M. on April 1, 1973, and ending at 7:00 A.M. on January 1, 1978, the price to be paid by Buyer to Seller for all gas delivered hereunder shall be as follows:

MONTHLY RATE

74.25 cents per Mcf when total deliveries are between 0 and 150 Mcf

34.25 cents per Mcf when total deliveries are between 151 and 1,000 Mcf

22.75 cents per Mcf when total deliveries are between 1,001 and 5,000 Mcf

21.25 cents per Mcf when total deliveries are between 5,001 and 15,000 Mcf

19.75 cents per Mcf when total deliveries are between 15,001 and 75,000 Mcf

19.25 cents per Mcf when total deliveries are over 75,000 Mcf provided, however, that the above prices shall be increased or decreased by the amount by which Seller's weighted average purchase price of gas for the preceding billing month in the New Orleans Area exceeds or is less than 17 cents per Mcf; provided, further, that the maximum amount payable in each of the above steps shall never be more than the minimum amount which would be payable in the step next below. Weighted average purchase price of gas in the New Orleans Area or any other area, as outlined in Exhibit A attached hereto, shall be determined by: (1) adding together all the volumes of gas which Seller purchased in the area and transferred into the area during the preceding billing month; (2) adding together the cost paid to be paid by Seller for the gas it purchased in the area and the cost allocable to the gas transferred into the area during the preceding billing month; and (3) dividing the total of said costs payable by the total of said volumes purchased in and transferred into the area. The resulting quotient shall be the weighted average purchase price of gas in the area. In computing weighted average purchase price, costs as used in the steps outlined above shall be:

(a) Cost allocable to gas transferred into an area shall be the result obtained by multiplying the weighted average purchase price of gas in the area from which the gas is transferred by the volume of gas transferred.

(b) Cost of gas purchased on the seaward side of the shorelines of Florida, Alabama, Mississippi, Louisiana and Texas, under contracts executed after January 1, 1968, shall be the amount payable to the producer, pipeline or other seller of such gas, plus the amount, if any, payable by Seller to others for delivery of the gas onshore; or, if Seller's facilities are used to deliver such gas onshore, an amount obtained by multiplying both of 25% of the depreciated investment, at the beginning of the preceding

billing month, in Seller's facilities used to deliver such gas onshore by the total volume of gas delivered through such facilities during said billing month, and (ii) multiplying the result so obtained by the volume of gas purchased under contracts executed after January 1, 1968, and delivered through such facilities during said billing month.

(c) The cost of any other gas purchased by Seller shall be the amount payable by Seller to the producer, pipeline or other seller thereof; provided, that in the computation of the weighted average purchase price for the Jackson Area neither the cost nor volumes of gas purchased by Seller from Tennessee Gas Pipeline Company for sale in northern Mississippi shall be included in the computation.

(d) For the purpose of determining weighted average purchase price there shall be included as part of the cost of gas, all taxes (as hereinafter defined) which may be levied upon and paid by Seller, or which Seller, under contractual or legal obligation pays to or for the person or company on which such taxes are levied, on or with respect to such gas prior to the receipt thereof by Seller in its Main Pipe Line System.

(e) For the purpose of determining weighted average purchase price, the cost of gas to Seller shall not be reduced by deductions from the amounts payable by Seller to the producer, pipeline, or other sellers thereof consequent to Seller's compression of such gas pursuant to arrangements permitted by Seller's gas purchase contracts.

(D) During the period commencing at 7:00 A.M. on January 1, 1978, and ending at 7:00 A.M. on January 1, 1983, the price for all gas delivered by Seller to Buyer hereunder shall be as set forth in (C) above except that each step of the monthly rate shall be increased by twenty-five hundredths of one cent (.25 cent) per Mcf.

(E) During the period commencing at 7:00 A.M. on January 1, 1983, and ending at 7:00 A.M. on January 1, 1988, the price for all gas delivered hereunder shall be the same rate as set forth in (C) above except that each step of the monthly rate shall be increased by fifty hundredths of one cent (.50 cent) per Mcf.

(F) Should Seller during any billing month during the periods set forth in Section (C), (D), and (E) hereof, deliver to Buyer gas hereunder containing a monthly average of less than one thousand (1,000) Btu per cubic foot, then

Seller's weighted average purchase price of gas as herein above defined in Section (C) of this article, shall be decreased 0.1% for each Btu that such monthly average is below 1,000 Btu per cubic foot.

(G) During the period commencing January 1, 1988, and extending to January 1, 1993, a price determined in the manner hereinafter provided for in this subdivision (G).

At least one hundred twenty (120) days, but not more than one hundred eighty (180) days, prior to the beginning of said period Seller shall determine and submit to Buyer in writing a new monthly rate for the gas deliverable hereunder during such period.

In the event the new monthly rate submitted by Seller represents an increase over the rate which is then in effect under the provisions of subdivision (E) hereof, Buyer shall notify Seller in writing at least sixty (60) days prior to the beginning of the period to which such new monthly rate shall apply whether or not Buyer is agreeable to such new monthly rate so submitted by Seller; it being understood that if such rate does not represent any increase over the rate which is then in effect under the provisions of subdivision (E) hereof then such new monthly rate so submitted by Seller shall be in effect hereunder for the five-year period in question and Buyer shall not have the right to terminate this contract. If such new monthly rate should represent an increase over the rate which is then in effect under the provisions of subdivision (E) hereof and Buyer notifies Seller that it does not agree to such new increased monthly rate, Seller shall have the right at any time within thirty (30) days after receipt of Buyer's notice to continue the contract in force throughout the five-year period in question by notifying Buyer that it will continue deliveries of gas through such period at the rate which is then in effect under the provisions of subdivision (E) hereof. However, if such new monthly rate should represent an increase over the rate which is then in effect under the provisions of subdivision (E) hereof and Buyer notifies Seller that it does not agree to such new monthly rate and Seller does not exercise its right in accordance with the foregoing to continue the contract in force, such contract shall, unless Buyer exercises its right to purchase gas during the period and on the conditions set forth in the next succeeding paragraph hereof, automatically terminate on the date of expiration of

the period next preceding the period for which such new monthly rate is applicable. Should Buyer exercise the right set forth in the next succeeding paragraph hereof, this contract shall automatically terminate on the expiration of the right so granted to Buyer.

If Buyer does not agree to any such new monthly rate and Seller does not elect to continue the contract in force as above provided and Buyer has not made arrangements for its fuel requirements prior to the beginning of the period for which such new monthly rate is applicable, Buyer shall, upon giving Seller notice prior to the commencement of such period, have the right to continue to purchase gas from Seller during the period Buyer is making any necessary physical changes or arrangements for its fuel requirements on the same terms and conditions as set forth herein except that the price to be paid for gas delivered shall be in accordance with said new monthly rate so determined by Seller for the period under consideration and to which such monthly rate Buyer did not agree; provided, however, that Buyer shall notify Seller immediately upon the completion of such arrangements for supplying its said requirements at which time the right granted to Buyer in this paragraph shall terminate and provided further that under no conditions shall this right extend beyond one year from the date this contract is subject to termination as hereinabove provided in the preceding paragraph hereof.

XV.

Tax Reimbursement

(A) For the period hereof ending at 7:30 A.M. on April 1, 1973, the following tax reimbursement provisions shall be effective:

Buyer agrees to reimburse Seller for all taxes which may be levied upon and paid by Seller or which Seller under contractual or legal obligation pays to or for the person or company on which such taxes are levied on or with respect to the gas delivered hereunder; provided, however, that no reimbursement shall be made to Seller under the provisions of this paragraph for such specific taxes as were in effect on June 1, 1965, up to the respective rates thereof on said date which Seller was then paying directly or indirectly. In the event such specific taxes as were in effect on June 1, 1965,

are decreased below the respective rates thereof on said date, Seller shall thereafter credit Buyer's monthly bill with the amount by which such taxes applicable to the gas delivered hereunder during the billing month in question were so decreased.

(B) For the period beginning at 7:00 A.M., on April 1, 1973, and extending for the remainder of this contract the following tax reimbursement provisions shall be effective:

Buyer agrees to reimburse Seller for all taxes which may be levied upon and paid by Seller or which Seller under contractual or legal obligation pays to or for the person or company on which such taxes are levied, on or with respect to the gas delivered hereunder; provided, however, that no reimbursement shall be made to Seller under the provisions of this article for any taxes which were included in the weighted average price of gas under the provisions of the Monthly Rate set forth in subsections (C) (D) and (E) of Article XIV hereof.

(C) The term "taxes" as used hereinafter in (A) and (B) shall mean any tax (other than ad valorem, income or excess profits taxes), license, fee or charge now or hereafter levied, assessed or made by any governmental authority on the gas itself or on the act, right or privilege of production, severance, gathering, transportation, handling, sale or delivery of gas which is measured by the volume, value or sales price of the gas in question; provided, however, that the term "taxes" shall not be deemed to include any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the State as a foreign corporation.

XVI.

Superseding of Prior Agreements

This agreement supersedes, cancels, and terminates as of the effective date of this agreement as set forth in Article XIII hereof that certain agreement between the parties dated August 6, 1952, as heretofore amended from time to time, insofar as it relates to the sale of gas by Seller to Buyer for use as fuel in the operation of Buyer's Ninemile Point Power Plant located at Westwego, Jefferson Parish, Louisiana. Both parties shall on said date be released from any and all obligations as between the parties hereto, under

said agreement of August 6, 1952, except as to any liabilities accruing or occurring prior to such date which have not been satisfied.

XVII.

Duly Constituted Authorities

This agreement is especially made subject to all present or future valid rules, regulations or orders of any commission or regulatory body having jurisdiction.

XVIII.

Descriptive Headings

The descriptive headings of the provisions of this agreement are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provisions.

XIX.

Successors and Assigns

This contract shall be binding upon and inure to the benefit of the respective heirs, representatives, successors and assigns of the parties hereto.

If all or any part of Buyer's plant, facilities, and/or other property, into which the gas sold hereunder is received and or utilized, are voluntarily sold or exchanged by Buyer, then and in such event, Buyer agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same subject to this agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement, and Buyer further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

If all or any part of Seller's pipe line system through which the gas sold hereunder is delivered to Buyer is voluntarily sold or exchanged by Seller and Seller will thereby be rendered unable to supply to Buyer any gas which it is obligated to supply hereunder, then, and in such event, Seller agrees that it will cause the person, firm or corporation so acquiring such property to take and hold the same

subject to this Agreement and subject to the obligation to fully and faithfully perform all of the obligations created by this agreement applicable to the property so sold or exchanged and Seller further agrees that it will incorporate appropriate covenants to this effect in any act of conveyance or instrument of transfer which may be executed by it.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed in two (2) counterparts, each of which shall constitute an original, on the day and year first above written.

WITNESSES:
/s/ John W. Hayes
/s/ Dina Roberts

UNITED GAS PIPE LINE COMPANY
By /s/ V. S. Brennan
Vice President

ATTEST:
/s/ J. R. DuBois
Assistant Secretary

WITNESSES:
/s/ H. L. Deloney
/s/ Donald L. Aswell

LOUISIANA POWER & LIGHT COMPANY
By /s/ (Illegible)
Senior Vice President

ATTEST:
/s/ Illegible
Asst. Secretary

NOTE: Map attached to the above (sent in the original).

* * * * *

UNITED GAS PIPE LINE COMPANY—LOUISIANA POWER & LIGHT COMPANY PROPOSED CURTAILMENT PER DAY OF GAS BY MONTH, 1971 ASSUMING ALLEGED 50,000 MCF/DAY SYSTEM SHORTAGE

	Contract amount cubic feet/day	Proposed Maximum Daily Delivery cubic feet day
Sterlington	30,000,000	
April, 1971		24,823,000
May, 1971		24,824,000
June, 1971		24,826,000

July, 1971		24,827,000
August, 1971		24,820,000
September, 1971		24,827,000
October, 1971		24,823,000
Nine Mile Point	80,000,000	
April, 1971		47,500,000
May, 1971		63,767,000
June, 1971		65,281,000
July, 1971		59,207,000
August, 1971		62,000,000
September, 1971		66,747,000
October, 1971		1[illegible]56,000

Exhibit "E"

Exhibit "F"

UNITED STATES OF AMERICA
Before the
FEDERAL POWER COMMISSION

UNITED GAS PIPE LINE COMPANY — DOCKET NO. RP71-29

SUPPLEMENTAL PETITION
FOR DECLARATORY ORDER

United Gas Pipe Line Company (United) hereby supplements its original petition in this proceeding as amended.

I.

This supplemental petition is made necessary by the fact that United's field supplies of gas continue to be insufficient to meet the demands of United's customers. Thus it is necessary that United's curtailment program be extended from April 1, 1971, at least through October 31, 1971.

This extended curtailment program represents a continued implementation of the "impairment of deliveries" provisions of United's tariff and direct sales contracts cited in United's original petition herein. United requests that the Commission declare that this extended curtailment program is in accordance with the terms of said tariff and contracts.

II.

The reasons for and details of United's extended curtailment program are fully set out in the prepared testimony of United's witnesses Barnett, Clopton and Belvin and the exhibits sponsored by these witnesses, said testimony and exhibits being filed concurrently herewith. In brief, the extended curtailment program affects only gas used for industrial purposes and gas used to generate electricity which in turn is used for industrial purposes, such gas having the lowest priority under the "impairment of deliveries" clauses in United's tariff and direct sales contracts. (Such gas is referred to hereinafter as "industrial gas".)

United has used all of the resources available to it to determine the volume of industrial gas sold to each of its customers in order that the extended curtailment program may be applied on a ratable basis. One change from the calculations for the winter curtailment reflected in United's original petition is that interruptible industrial gas is included in the curtailment volumes for the extended program which covers the non-winter months. Such interruptible loads were excluded in the winter program calculations on the assumption that they would be fully curtailed while that program was in effect. That assumption does not apply to the extended program.

As reflected in the testimony of Mr. Clopton, United has calculated the base requirements for each of its customers during each month of the period covered by the extended program. In general, these base requirements reflect actual daily average deliveries to such customers in the like period in 1970, adjusted (a) to eliminate the effect of force majeure and other abnormal situations, (b) to reflect normal anticipated growth in domestic gas and electrical loads, (c) to reflect addition of new electrical and industrial capacity contemplated by United's existing commitments, and (d) to eliminate the effect of voluntary reductions by United's pipeline customers in 1970.

The testimony and exhibits filed concurrently herewith show that the required curtailment has been applied ratably to United's customers by deducting each customer's prorata share of the industrial gas curtailment from each customer's base requirements to determine the volume of gas each customer can take on a daily average basis during each month covered by the extended program. The estimated

curtailment of some 50,000 Mcf per day on a system-wide basis will have a minimal impact on United's customers when spread on the indicated prorata basis. In addition, however, new so-called "dump sales" cannot be made by such customers under the extended program. This latter restriction will primarily affect United's city gate customers with substantial volumes of valley gas that might otherwise be sold for the first time to such loads as steam electric plants. The making of such sales could quickly put United in the position of having to curtail domestic customers in the 1971-1972 heating season. The restriction against such sales is thus designed to protect the domestic customers served with United's gas, including the domestic customers of the distributors who might otherwise make such new "dump sales".

III.

United continues to make every possible effort to purchase a sufficient supply of gas to eliminate the need for curtailments. These efforts include the purchase of very substantial volumes of very high cost spot gas. Despite these efforts, United has been unable to locate, much less place under contract, the substantial new interstate reserves required to supply the growing demands of United's customers.

United's efforts thus far have enabled it to hold actual and projected curtailments to relatively low levels. As more concentrated and wide-spread effort is brought to bear on alleviating our national energy crisis, it is hoped that the national gas shortage will be solved expeditiously so that curtailments can become a thing of the past.

United respectfully requests that the Commission issue its order declaring that the extended curtailment program described herein and in the testimony and exhibits filed concurrently herewith is in accordance with the terms of United's tariff and direct sales contracts.

Respectfully submitted,

UNITED GAS PIPE LINE COMPANY
By: /s/ William B. Cassin
WILLIAM B. CASSIN
Vice President and
General Attorney

(Title Omitted)

No. 16,637

SUPPLEMENTAL AND AMENDED COMPLAINT

Now comes complainant, Louisiana Power & Light Company ("LP&L"), and amends its complaint filed herein on March 31, 1971 against defendants, United Gas Pipe Line Company ("United") and Pennzoil United, Inc. ("Pennzoil"), by incorporating further an additional cause of action, as follows:

I.

By adding additional paragraphs to follow Paragraph 10 of the original complaint, as follows:

10(A) On March 31, 1971, at a conference held in the chambers of a judge of this Court, counsel for United and Pennzoil assured this Court and counsel for LP&L that LP&L would be curtailed in its deliveries of natural gas from United to the extent of only 7-10th of 1% of its requirements in the summer of 1971. On the morning of April 26, 1971, contrary to such assertions and assurances, United's dispatcher informed the Nine Mile Point Generating Station of LP&L that United would deliver no more than 47,000 mcf of natural gas per day to said generating station despite the fact that the contract between the parties calls for a maximum delivery of 80,000 mcf of natural gas per day to said generating station.

10(B) On information and belief, LP&L alleges that the curtailment of delivery to its Nine Mile Point Generating Station by United on April 26, 1971, and the threatened curtailment continuing thereafter was not and is not required to supply the needs of domestic consumers of gas on said days; and is not due to an alleged shortage of gas on said days, but that such curtailment was and is for the purpose of providing United with excess gas to insert in its underground storage reservoirs on April 26, 1971 and on a continuing basis thereafter.

10(C) Said curtailment of delivery by United is in breach of and in violation of the delivery obligations of United in its contract with LP&L for the Nine Mile Point Generating Station, and is contradictory to and in violation of the "impairment of deliveries" article in said contract quoted hereinabove in Paragraph 6.

10(D) Unless United and Pennzoil are temporarily enjoined and restrained from such unlawful curtailments by this Court, United will continue to breach its obligation to LP&L under such contract to the continuing and irreparable damage of LP&L, and United should be required to sell and deliver to LP&L the volume of natural gas that United agreed to sell and deliver in said contract in the full contract amount of 50,000 mcf per day to the Nine Mile Point Generating Station of LP&L.

10(E) As a result of the said action by Pennzoil and United, LP&L has been required to seek additional gas in order to operate its Nine Mile Point Generating Station on a temporary and uncertain "spot" basis for "transfer gas" at a considerably greater expense to LP&L and at a considerably greater risk to its ability to generate electricity; additional gas is necessary for LP&L to avoid a serious impairment of its ability to meet its summertime peak electric generating load requirements and to avoid a possible power shortage in the LP&L and adjoining service areas.

10(F) LP&L has no adequate remedy at law herein, inasmuch as electricity is a product which cannot be stored and must be supplied when the demand therefor exists, or not at all, and in view of the fact that LP&L has some $84,000,000 invested in the Nine Mile Point Generating Station alone, in addition to its investment in its transmission lines and distribution lines connected thereto and its interties dependent thereon, and there is no remedy for the loss of use of such investment or the loss of revenue from its inability to serve electricity or the loss of electricity to the general public.

10(G) Accordingly, United's arbitrary breach of contract, as set forth herein, is preventing, and unless enjoined will continue to prevent the normal and necessary operation of LP&L's Nine Mile Point Generating Station and may necessitate a curtailment of the operation of said station at a time when such operation is vitally necessary, not only to complainant itself, but also in the general public interest.

10(H) Additionally, on March 29, 1971, United advised LP&L that United anticipated a further curtailment program for the "winter months" of November 1, 1971 to March 31, 1972 of some 44.7 million cubic feet of natural gas

throughout its pipe line system, which United proposes to prorate among its customers on the same basis as its present summer and past winter curtailment programs. Such curtailment will even more seriously affect the Sterlington and Nine Mile Point Generating Stations of LP&L, particularly in view of the fact that it exceeds by more than four times the present summer curtailment program and is more than twice the winter curtailment program instituted in the winter of 1970-71. Said curtailment program will be in further violation of the delivery obligations of United and will not be in accordance with the contract articles on "impairment of delivery" quoted hereinabove in Paragraphs 5 and 6. A copy of United's estimate of system demand and supply, November 1971 through March 1972, as filed in FPC Docket No. RP71-29, is attached hereto as Exhibit "G".

10(I) United has further advised LP&L that it intends to pursue requiring the conversion of all of its electric power company "boiler fuel" customers to the use of crude oil for the generation of electricity. LP&L's Sterlington Generating Station has no present alternate fuel capability for the burning of crude oil rather than natural gas, and it is estimated that in excess of $4,000,000 would be required to be invested in such facilities for Sterlington alone, with little, if any, possibility of such expense being recovered by LP&L through a rate increase from the Louisiana Public Service Commission. A copy of the memorandum of March 22, 1971 from Mr. Cassin, Vice President and General Counsel of United, to Mr. Kerr, General Counsel with Pennzoil, setting forth such program is attached hereto as Exhibit "H".

WHEREFORE, LP&L prays that this Court:

(1) Grant Leave to LP&L to file its amended complaint;

(2) Issue a Temporary Restraining Order as provided by Rule 65b of the Federal Rules of Civil Procedure, in the form prayed for in the original complaint herein, and additionally restraining United from curtailing deliveries to LP&L's Nine Mile Point Generating Station forthwith, and otherwise breaching its contract with LP&L and restraining and enjoining Pennzoil from including such action and breach;

(3) Issue a preliminary injunction in accordance with Rule 65 of the Federal Rules of Civil Procedure as prayed for in the original and this amended complaint;

(4) Issue a permanent injunction in said respect;

(5) Grant such other and further relief at law or in equity as the Court may deem just and proper.

DATED:
April 27, 1971

THEUS, GRISHAM, DAVIS & LEIGH
THOMAS W. LEIGH
By /s/ Thomas W. Leigh

MONROE & LEMANN
ANDREW P. CARTER
EUGENE G. TAGGART
CHAS. KING MALLORY

By /s/ Andrew P. Carter
ATTORNEYS FOR LOUISIANA POWER & LIGHT COMPANY, *Plaintiff.*

VERIFICATION

STATE OF LOUISIANA
PARISH OF ORLEANS

E. A. Rodrigue, being duly sworn deposes and says that he is the President of Louisiana Power & Light Company, plaintiff herein, and that he has read the foregoing Supplemental and Amended Complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged in information and belief, and as to those matters he believes them to be true.

/s/ E. A. Rodrigue,
E. A. RODRIGUE,
President

Sworn to and subscribed before me this 27 day of April, 1971.

/s/ Steven O. Medo, Jr.
Notary Public

March 26, 1971

To All Jurisdictional Customers
Of United Gas Pipe Line Company
And Parties In Docket No. RP71-29

Re: FPC Docket No. RP71-29
United Gas Pipe Line
Company

Pursuant to request made during the hearing on March 9, 1971 in the above captioned proceeding, United Gas Pipe Line Company herewith encloses for your information copy of graph "Preliminary Estimate of System Demand and Supply—November 1971 Through March 1972".

This estimate on the demand side assumes that, subject to our contractual delivery obligations, domestic uses of gas will increase approximately 3% for our city gate customers, consumption of electricity generated in power plants which we supply will increase approximately 8%, and our pipeline customers will take as close to their contractual maximums as they possibly can. The weather conditions upon which this estimate is based project a normal winter insofar as the weather data in our files is concerned, and these data go back more than 30 years.

On the supply side, this estimate is based upon very limited acquisitions of new gas reserves, and also assumes that we will no longer be authorized by the Federal Power Commission, as of November, 1971, to make emergency purchases of spot gas.

Yours very truly,

United Gas Pipe Line Company
/s/ William B. Cassin
Vice President and
General Attorney

Exhibit "G"

Note: The graph attached to the above is sent in the original.

March 22, 1971

To: Baine P. Kerr
From: William B. Cassin
Re: Obtaining gas supply through displacement of sales for power generation by coordinated use of substitute fuels

BACKGROUND

United Gas Pipe Line Company is experiencing a sharp and worsening gas supply shortage on its system because of the unheralded and unprecedented national shortage of new gas discoveries. United's shortage first manifested itself on a few peak days in the 1969-70 winter when United found it necessary to curtail some industrial loads to maintain service. During this period, about 2,000,000 Mcf were curtailed. In the 1970-71 winter, United's supply situation had become even more critical and a fully developed curtailment program was implemented which resulted in 20,000,000 Mcf * in curtailments.

Now, United, in order to fill its storage fields in preparation for the 1971-72 winter, has projected curtailments of some 10,000,000 Mcf * in the period of April through October 1971. Moreover, if substantial new supplies cannot be added to United's system before November of 1971, and even assuming that United's storage fields are completely filled by then to their full design capacity, United is projecting curtailments in the 1971-72 winter in the vicinity of 50,000,000 Mcf based on an average winter.

United's projections presently indicate that, barring a reversal of current trends at an earlier date than presently anticipated, curtailments will continue to be required over the next three or four years, reaching their peak in the 1972-73 winter and receding thereafter. These long range projections are not particularized in specific volumes, but rather, deal only with general trends of supply and demand on United's system.

The Problem

United, unlike most pipeline companies, has express pro-

* These curtailment figures would be much higher if United could not purchase spot gas under FPC Order Nos. 402-A and 418.

visions in its tariffs and direct sales contracts which spell out the order of priority in the event of a shortage. Domestic gas uses are the highest priority. Next are domestic electricity uses which rely on gas fired boilers. Last are industrial uses. Although United has been forced by disputes with some of its customers to request a declaratory order affirming United's construction of these curtailment clauses (FPC Docket No. RP 71-29), the clauses are sufficiently clear so that an orderly program of curtailment may be, and in fact has been established to deal with fairly severe gas shortages.

As the magnitude of projected shortages grows, however, and as curtailments become 365-day-a-year affairs, economic, political and human factors begin to intervene and undercut the efficacy of the cut-and-dried contract language designed to cope with shortage situations. Potential curtailments of domestic uses of electricity and gas aside, long term and deep curtailments of industrial gas can produce severe hardships on the industries involved, their employees and the communities in which they are situated. The fact that a contract executed in an era of gas supply sufficiency authorizes and even requires a curtailment which may close down a paper mill, or nylon plant, or refinery, or chemical works, is no comfort to United.

In short, something more than a logical and equitable curtailment program is required to mitigate the impact of the current and projected shortages on United's system. Pending the time when the new initiatives of the current FPC can take effect and bring forth large new reservoirs of gas available for commitment to the interstate market, interim measures must be taken to maintain energy supplies for the markets served by United and its customers.

The Solution

United's largest class of direct customers in terms of volumes are the six major power companies and one large power cooperative who buys gas from United for boiler fuel. Attached as Appendix I is a tabulation showing, for each of these customers, the volumes United delivered to each at their various plants, showing their 1970 coincidental and non-coincidental peak days and their 1970 annual volumes. Attached as Appendix II is a tabulation showing the Maximum Daily Delivery Obligation of United to each plant as

well as the standby or alternate fuel capabilities of each plant and unit. Attached as Appendix III is a tabulation showing the work required to convert the plants to full-time use of alternate fuels, and a rough estimate of the costs involved in providing required additional fuel storage capacity.

From the information contained in the Appendices, it can be seen that conversion of all of these generating units or even a fraction thereof, to full-time use of an alternate fuel will substantially reduce the need for curtailing United's customers. The amount of relief available cannot presently be definitely estimated since timing problems with regulatory lag and construction activities cannot be fully anticipated. Of course, the sooner substantial conversion could be effected, the greater will be the contribution toward solving the problem.

United's Proposal

United proposes that the Commission, in exercise of its powers under Sections 4, 5, 7, 10 and 16 of the Natural Gas Act, implement the following program:

1. United will be authorized to cease or reduce deliveries of gas to the power plants on such dates as said plants can convert to full-time use of alternate fuels. The cessation or reduction of deliveries will be effected only during such period as United is unable to contract for sufficient long term gas supplies to serve existing demands of existing customers and normal growth in domestic use demands within existing contract limitations.

2. United will amend its contracts with its power company customers to provide for such cessation and also to provide for the construction of necessary facilities by such customers and the apportionment of capital costs and fuel expenses in the manner hereafter detailed.

3. Recognizing the long-term benefits to their electric customers in continuity and reliability of service, the electric generating companies will bear the capital costs of the conversions and include these costs in their rate bases.

4. Recognizing the benefit to United's other customers of continued gas service, such other customers will bear the cost of alternate fuels used by the electric generating companies, to the extent such costs exceed said companies' contracted gas costs, on a heat equivalent basis.

5. United will maintain full and complete records and make periodic reports to the Commission showing:

a. The amount of gas which would have to be curtailed, with both demand and supply projected for the succeeding twenty-four months but for implementation of this program.

b. The excess cost, on a heat equivalent basis, of the alternate fuels used by the electric companies involved, with complete data as to quantities of fuel, heat value, dates of consumption, and cost of purchase, handling and storage.

c. The quantities of gas sold to each of its customers on a monthly basis, with a comparison showing maximum contract volumes and maximum volumes actually taken. These quantities will be projected at least three months beyond the date of each report.

6. United will amend its power company contracts to substitute for the present fixed prices a price consisting of, (a) United's average cost of gas, (b) a reasonable transportation charge, and (c) the surcharge described below.

7. United will amend its FPC Rate Schedules and direct industrial agreements to provide that all of its customers will bear the electric companies' excess costs of alternate fuels through payment of a surcharge. Such surcharge will be allocated to each customer in a ratio based on the amount of gas which such customer would have been curtailed, under the program provided in United's tariff, compared to the total projected curtailment. The amount of this surcharge will be computed monthly based on the latest data contained in the records and reports required of United under this program. The surcharge will be rounded to the nearest tenth of a mill. United will adjust the surcharge to account for any differences between the amounts sought to be recovered thereunder and the amounts actually recovered.

8. Any of United's direct customers which refuses to agree to the contract amendments necessary to effect this program will be curtailed as if the program were not in effect at all. Additionally, should a curtailment be necessary for any reason despite implementation of this program, such non-consenting direct customers, if any, will be curtailed 100% before any of United's other customers are curtailed. Finally, United will be directed not to renew its contracts with such customers when they expire.

CONCLUSION

The program outlined above may be unprecedented, but so is the emergency which makes it necessary. The program is designed to free up the largest amount of gas possible in the shortest time possible. Furthermore, the program equitably allocates the costs among the beneficiaries, including domestic consumers, who but for this program would have to shoulder greatly increased rates in order for United to recover its full cost of service.

The program is also self-limiting in that the capital costs are to be borne by the primary short-and-long-term beneficiaries of such costs—the electric consumers—and the expenses will be prorated and recovered on virtually a current basis. When the expenses cease, *i.e.*, when there is enough gas to supply the power companies and United's other customers, the surcharges will cease.

The program is one which the Commission can implement and supervise within current statutory authority. It is in the public interest and it is certainly required by the public convenience and necessity that the program be implemented at the earliest possible date.

Filed
April 27, 1971

* * * * *

(Title Omitted)

No. 16,637

BOND

KNOW ALL MEN BY THESE PRESENTS that we, Louisiana Power & Light Company, as principal, and The Travelers Indemnity Company as surety, are held and firmly bound unto United Gas Pipe Line Company, and Pennzoil United, Inc., defendants in the above entitled action, in the sum of $5,000.00 to be paid to the said United Gas Pipe Line Company, and Pennzoil United, Inc., their administrators, and assigns to which payment we bind ourselves and our administrators, jointly and severally.

Sealed with our seals and dated the 27 day of April, 1971.

WHEREAS, the said Louisiana Power & Light Company has obatined from the United States District Court for the

Western District of Louisiana a temporary restraining order against the said United Gas Pipe Line Company, and Pennzoil United, Inc., upon condition that plaintiff execute and file a good and sufficient bond for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Now, Therefore, the condition of this obligation is such that if the said United Gas Pipe Line Company, or Pennzoil United, Inc. shall pay any costs or damages which may be incurred by any party who is found to have been wrongfully enjoined or restrained by such temporary restraining order, then this obligation shall be void; otherwise, it shall remain in full force and effect.

The Travelers Indemnity Company	Louisiana Power & Light Company
By /s/ Linda F. Bates *Attorney-in-Fact*	By /s/ (Illegible)
	Approved 4/28/71
	/s/ Ben C. Dawkins, Jr., *U.S. Dist. Judge*

Filed
April 28, 1971

* * * * *

(Title Omitted)

No. 16,637

TEMPORARY RESTRAINING ORDER

This cause came on to be heard contradictorily on the verified complaint and supplemental complaint of plaintiff and the certificate of Andrew P. Carter, Esq., attorney for plaintiff, and it appearing to the Court that the defendants are committing acts, and are about to commit acts as set forth in plaintiff's complaint, and will continue to do so unless restrained by order of this Court, and that immediate and irreparable injury, loss or damage will result to plaintiff; and that plaintiff entered into a valid and existing contract for the supply of natural gas to its Sterlington and Nine Mile Point generating stations with defendant United Gas Pipe Line Company (United) under the terms of which defendant United is obligated to supply 25,000 mcf of natu-

ral gas on a daily basis to plaintiff at Sterlington with no hourly limitations, and 80,000 mcf of natural gas on a daily basis to Nine Mile Point with no hourly limitations, and it further appearing that defendant was supplied said gas on a daily basis pursuant to said contract, but has and is wrongfully planning to curtail said supply all in breach of said contract, and will continue to do so unless restrained by this Court to the considerable immediate peril and exposure to Louisiana Power & Light Company's system and those systems with which it is interconnected, and to the continuing economic detriment of Louisiana Power & Light Company in that it cannot operate its Sterlington and Nine Mile Point generating stations at full capacity, and fulfill its contractual and legal obligations to provide electric service and standby generating capacity; it is therefore ordered that United Gas Pipe Line Company, its officers, agents, representatives, employees, attorneys, and all persons in active concert and participation with it, including its parent company, Pennzoil United, Inc. be and they are hereby restrained from in any manner either directly or indirectly curtailing the supply of natural gas provided to Louisiana Power & Light Company in breach of the contracts between plaintiff and defendant, and said persons are hereby affirmatively directed to provide Louisiana Power & Light Company with natural gas on a daily basis pursuant to the terms of the contracts between plaintiff and defendant, United, without curtailment; provided that plaintiff first give security in the sum of $5,000.00 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, such bond to be approved by the Court or by the Clerk of the Court; and

It Is Further Ordered that this Order expire within 10 days after entry unless within such time as the Order for good cause shown is extended, or unless the defendant consent that it may be extended for a longer period; and

It Is Further Ordered that Plaintiff's application for a preliminary injunction be sent down for hearing on the 11th day of May, 1971, at 10:00 o'clock A.M. at Shreveport, Louisiana; and

It Is Further Ordered that copies of this order and of plaintiff's complaint and supplemental complaint and the attachments submitted therewith, together with proper

summons issued by the Clerk of this Court, be immediately served by the United States Marshal upon the defendants.

Issued at Shreveport, Louisiana, April 27, 1971, at 6:15 o'clock P.M.

/s/ Ben C. Dawkins, Jr.
United States District Judge

Service accepted and citation
waived, reserving all other rights.
This 29th day of April, 1971.

/s/ John T. Guyton
Attorney for United Gas Pipe Line Company & Pennzoil United, Inc.

Filed
April 28, 1971

* * * * *

(Title Omitted)

No. 16,637

The Federal Power Commission moves for leave to intervene as a defendant in this action in order to assert the defenses set forth in its proposed motion to dismiss, hereto attached, on the ground that it has exclusive jurisdiction under the Natural Gas Act (15 U.S.C.A. § 717 *et seq.*) over curtailments in service of natural gas which is transported or sold in interstate commerce. Accordingly, it has a defense to plaintiff's claim which presents questions of law in common to the main action.

/s/ Donald E. Walter
DONALD E. WALTER—Per
GORDON GOOCH
U.S. Attorney
Attorney for Federal Power Commission
Applicant for Intervention

Office of U.S. Attorney
Shreveport, Louisiana

By /s/ Gordon Gooch
GORDON GOOCH
General Counsel
Federal Power Commission
Washington, D.C. 20426

Of Counsel:
s George P. Lewnes
GEORGE P. LEWNES
Assistant General Counsel

s George W. McHenry, Jr.
GEORGE W. McHENRY, JR.,
Commission for Staff Counsel

Filed
April 28, 1971

* * * * *

(Title Omitted)
No. 16,637

MOTION TO DISMISS

The Federal Power Commission, as intervenor, moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter, such jurisdiction being exclusively vested with the Federal Power Commission by virtue of Sections 4, 5 and 16 of the Natural Gas Act.

3. To dismiss the action on the ground that plaintiff has failed to exhaust its administrative remedies under Section 19 of the Natural Gas Act.

Respectfully submitted,
s Donald E. Walter
DONALD E. WALTER, per
GORDON GOOCH
By /s/ Gordon Gooch

Of Counsel:
s George P. Lewnes
s George W. McHenry, Jr.

Filed
April 28, 1971

* * * * *

(Title Omitted)

No. 16,637

MOTION TO DISSOLVE AND DISMISS

United Gas Pipe Line Company and Pennzoil United, Inc., Defendants, move the Court to dissolve the Temporary Restraining Order heretofore issued and to dismiss Plaintiff's complaint for the following reasons:

(1) The complaint fails to state a claim upon which relief can be granted.

(2) The Court lacks jurisdiction over the subject matter, exclusive jurisdiction being vested in the Federal Power Commission under and by virtue of the Natural Gas Act (15 USCA § 717 et seq.).

(3) Because this is a collateral attack upon proceedings now in progress before the Federal Power Commission, to which proceedings Plaintiff is a party, and Plaintiff has failed to exhaust its administrative remedies under the Natural Gas Act.

Respectfully submitted,
William B. Cassin
William R. Choate
Wm. O. Crain, Jr.
John T. Guyton
By /s/ John T. Guyton

Filed
April 29, 1971

* * * * *

(Title Omitted)

No. 16,637

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

The Federal Power Commission, Intervenor, moves the Court to dissolve the Temporary Restraining Order previously granted in this matter as improvidently granted on the ground that the Federal Power Commission has exclu-

sive jurisdiction of curtailments in service by interstate natural gas pipe line companies.

Respectfully submitted,
/s/ Donald E. Walter
/s/ George W. McHenry, Jr.

Filed April 29, 1971

* * * * *

(Title Omitted)

No. 16,637

JUDGMENT

Pursuant to reasons handed down this date, it is hereby ordered, adjudged and decreed;

That the motion to intervene herein by the Federal Power Commission is hereby granted and the Federal Power Commission is hereby made a party to these proceedings;

That the Temporary Restraining Order heretofore issued on April 27, 1971, be, and the same is hereby dissolved;

That the plaintiff's suit is hereby dismissed for lack of jurisdiction of this Court.

Thus Done and Signed at Shreveport, Louisiana, this 29th day of April, 1971.

/s/ Ben C. Dawkins, Jr.
United States District Judge

Filed April 29, 1971

* * * * *

(Title Omitted)

No. 16,637

NOTICE OF WRIT AND/OR APPEAL

Notice is hereby given that Louisiana Power and Light Company, plaintiff above named, hereby appeals and/or applies for a writ to the United States Court of Appeals for the Fifth Circuit from the judgment entered in this action on the 29th day of April, 1971.

Theus, Grisham, Davis & Leigh
Thomas W. Leigh
/s/ Thos. W. Leigh

MONROE & LEMANN
ANDREW P. CARTER
EUGENE G. TAGGART
CHAS. KING MALLORY
/s/ Andrew P. Carter.

Filed
April 29, 1971

* * * * *

(Title Omitted)

No. 71-1773

Court of Appeals
Fifth Circuit

ORDER VACATING JUDGMENT
OF DISTRICT COURT

Upon consideration of the application by Louisiana Power & Light Company for writs of mandamus and certiorari and/or for expedited appeal, and motion for injunction pending appeal, and good cause appearing for relief granted herein,

IT IS ORDERED that the judgment of the United States District Court, Western District of Louisiana, in "Louisiana Power & Light Company v. United Gas Pipe Line Company, et al." Civil Action No. 16,637, dated April 29, 1971, be and it is hereby vacated and set aside insofar as it dissolved the temporary restraining order of April 27, 1971 in that action and dismissed that proceeding;

IT IS FURTHER ORDERED that the temporary restraining order in the above said Civil Action No. 16,637, dated April 27, 1971, be and it is hereby reinstated and made effective pending consideration of the application for writs herein and/or expedited appeal, and subject to further orders as may be forthcoming from a panel of this Court.

Thus done and signed at New Orleans, Louisiana, this 1st day of MAY, 1971.

/s/ John Minor Wisdom
JOHN M. WISDOM, *Circuit Judge*

Filed
May 3 '71
Edward W. Wadsworth
Clerk

* * * * *

(Title Omitted)

No. 16,637

BOND FOR COSTS ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, Louisiana Power & Light Company as principal and The Travelers Indemnity Company as surety, are held and firmly bound unto United Gas Pipe Line Company, Pennzoil United, Inc., and the Federal Power Commission in the full and just sum of TWO HUNDRED FIFTY AND NO 100 ($250.00) DOLLARS, to be paid to the said United Gas Pipe Line Company, Pennzoil United, Inc. and the Federal Power Commission, their successors, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors, and administrators, jointly and severally by these presents.

Sealed without seals and dated this 29th day of April, 1971.

WHEREAS, on April 29, 1971, in an action pending in the United States District Court for the Western District of Louisiana, between Louisiana Power & Light Company as plaintiff and United Gas Pipe Line Company and Pennzoil United, Inc. as defendants, a judgment was rendered against the said Louisiana Power & Light Company and the said Louisiana Power & Light Company having filed a notice of appeal from such judgment to the United States Court of Appeals for the Fifth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if the said Louisiana Power & Light Company shall prosecute its appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Court of Appeals may award against the said Louisiana Power & Light Company if the judgment is modified, then this obligation is to be void; otherwise to remain in full force and effect.

LOUISIANA POWER & LIGHT COMPANY,
Principal
By /s/ Andrew P. Carter
THE TRAVELERS INDEMNITY COMPANY
By /s/ W. E. Leigh

Filed
May 3, 1971

* * * * *

(Title Omitted)
No. 71-1773
Court of Appeals
(Fifth Circuit)

ORDER

Before WISDOM, COLEMAN, and SIMPSON, Circuit Judges.

BY THE COURT:

This matter arises out of the complaint of the Louisiana Power & Light Company (LPL) against United Gas Pipe Line Company (United), a wholly-owned subsidiary of Pennzoil United, Inc., alleging that United breached its contract with LPL for the supply of natural gas to LPL's electrical generating plants at Sterlington and Nine Mile Point in Louisiana. The Federal Power Commission intervened. On April 27, 1971, the district court, having considered only the complaint and brief of LPL, granted a temporary restraining order prohibiting United from violating its contract curtailing its supply of gas to LPL. The order set a hearing on the preliminary injunction for May 11, 1971. United and the Federal Power Commission thereupon moved to dissolve the temporary restraining order and to dismiss the complaint for the following reasons:

"(1) The complaint fails to state a claim upon which relief can be granted.

(2) The Court lacks jurisdiction over the subject matter, exclusive jurisdiction being vested in the Federal Power Commission under and by virtue of the Natural Gas Act (15 USCA § 717 et seq.)

(3) Because this is a collateral attack upon proceedings now in progress before the Federal Power Commission, to which proceedings Plaintiff is a party, and Plaintiff has failed to exhaust its administrative remedies under the Natural Gas Act."

On April 29, 1971, the district court, without a hearing but after having received briefs from the parties and the intervenor, granted leave to the Federal Power Commission to intervene, dissolved the temporary restraining

order, and dismissed the suit for lack of jurisdiction. LPL filed a notice of appeal.

On Saturday morning, May 1, 1971, LPL moved for leave to file writs of mandamus and certiorari and, alternatively, for an expedited appeal. LPL also moved for an injunction pending appeal. These matters were presented ex parte to a single judge (Wisdom, J.). In the interest of judiciary economy, he treated these motions as one matter, as this panel does, calling for a stay of the district court's order dismissing the complaint and dissolving the temporary restraining order. Shortly after noon on Saturday, Judge Wisdom declined to pass upon the merits of the motions but issued a stay, subject to further orders of this Court, until a panel could be convened and conduct a hearing on the merits of LPL's motions. See Rule 8(a) of the Federal Rules of Appellate Procedure and Rule 10(b)(11), Local Rules of the United States Court of Appeals for the Fifth Circuit.

On May 5, 1971, a panel of this Court, consisting of the undersigned judges, conducted a hearing at which counsel for the Federal Power Commission, United, and LPL were present and given an opportunity to argue the case at length. The Court has now had an opportunity to consider the briefs, affidavits, and other papers presented at that hearing and subsequent to the hearing.

We note, first, taking an over-simplified view of the case, that the district court had before it as the basis for its decision only the original and amended complaints, the allegations of which must be accepted as true for purposes of a motion to dismiss. According to these allegations, the contract simply involved the direct sale of gas for use or consumption by the purchaser. And such sales are not within the jurisdiction of the Federal Power Commission. The construction of the contract therefore was for the court and United's curtailment of gas deliveries to LPL's plants was a breach of contract, a question within the district court's jurisdiction.

The case, however, is not that simple. It is evident to the Court that there are many disputed issues of fact and mixed issues of fact and law bearing upon a proper interpretation of the contract and a proper construction of the Natural Gas Act, 15 U.S.C. § 717, et seq. Indeed, counsel for the parties argue as if this Court had before it a transcript of testimony and the district court's findings of

fact and conclusions of law. We have concluded therefore that this is the type of case that requires the district court to take jurisdiction for the purpose of determining if it has jurisdiction. With this end in view the district court is directed to hold a full hearing at which the parties may present evidence bearing upon the jurisdictional issue.

The case is important. LPL contends that curtailment of gas deliveries will have a serious detrimental effect on its customers during its peak season, the summer months. United contends that this is a fight about who gets natural gas when there is not enough to go around; that is a matter peculiarly within the province of the Federal Power Commission. The Commission agrees with United and asserts that an adverse decision in this case will have a severe and detrimental impact upon the natural gas industry and the public which it serves. At this time the Commission is conducting curtailment proceedings to which the LPL is a party.

It Is Therefore Ordered:

1. Judge Wisdom's order vacating the district court's judgment of dismissal is reaffirmed as the order of this Court.

2. The case is remanded to the district court for an expedited hearing on the jurisdictional issue and on such other preliminary issues as may properly be raised. This Court expresses no opinion on the jurisdictional issue. At such hearing counsel for the parties and the intervenor may present evidence bearing on the jurisdiction of the court and on other appropriate preliminary questions. The district court will make appropriate findings of fact and state its conclusions of law.

3. Should the district court decide that it has jurisdiction, it will expedite the hearing on the merits. An appeal, if any, will be expedited.

4. This Court continues the stay issued by Judge Wisdom pending the hearing and judgment of the district Court.

Filed
May 14, 1971
Edward W. Wadsworth, Clerk

Filed
May 17, 1971
Alton L. Curtis, Clerk

* * * * *

CERTIFICATE:

I, P. E. Grimm, in my capacity as Assistant Regional Manager of Texaco Inc., Producing Department, Southeast Region, have custody of the records of the Gas Department, which include Gas Sales and Purchase Contracts and all related and other agreements, and I hereby certify that this is a true copy of certain provisions of that certain Gas Sales and Purchase Contract dated May 7, 1968 between Texaco Inc. and Louisiana Power and Light Company, specifically, the Preamble and Articles I, II, III and V.

/s/ P. E. Grimm
P. E. GRIMM

Sworn to and subscribed before me on this 28th day of May, 1971.

/s/ Clement R. Thome, Jr.
Notary Public

Gas Sales and Purchase Contract

This Agreement made and entered into this 7th day of May, 1968 by and between TEXACO INC., a corporation of the State of Delaware, herein represented by A. F. Higgins, Jr., its Attorney-in-Fact, hereinafter referred to as "Seller," and LOUISIANA POWER & LIGHT COMPANY, a corporation of the State of Florida, herein represented by E. A. Rodrigue, its Senior Vice President, hereinafter referred to as "Buyer."

Witnesseth:

That Whereas, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller natural gas needed to supply sixty-six and two-thirds percent (66⅔%) of the fuel energy requirements for the operation of Buyer's Nine-Mile Point Steam-Electric Generating Station, as hereinafter more fully defined under and in accordance with the terms and provisions hereinafter set forth:

Now, Therefore, in consideration of the premises and of the mutual benefits, covenants and agreements herein contained, the parties hereto, Seller and Buyer, have agreed and do hereby agree as follows:

Article I

Definitions

(1) The term "Day" means a period of twenty-four (24) consecutive hours beginning and ending at eight o'clock in the morning, local time. The reference date for any day shall be the date of the beginning of such day.

(2) The term "Month" means the period beginning at eight o'clock in the morning, local time, on the first day of a calendar month and ending at eight o'clock in the morning, local time, on the first day of the next succeeding calendar month.

(3) The term "Contract Year" shall mean a period of twelve consecutive months beginning at eight o'clock a.m., local time, on January 1, 1971 or eight o'clock a.m., local time, on the first day of the first month following the month in which Commercial Operations of Buyer's new 750 megawatt steam-electric generating unit are commenced, which-

ever date occurs first, and at eight o'clock local time on each anniversary of said date. It is further provided that if Commercial Operations of Buyer's new 750 megawatt steam-electric generating unit as referred to in Article I (5) hereof are commenced prior to January 1, 1971, then the first Contract Year shall include the period of time commencing with the date of commencement of Commercial Operations of Buyer's new 750 megawatt electric generating unit to the first day of the following month and the succeeding twelve months.

(4) "Commercial Operations," as used herein, shall mean the date on which the new 750 megawatt steam-electric generating unit, as hereinafter defined, is accepted by the Middle South System Operator for dispatching as part of the Middle South generating capability and is the same date that this aforesaid unit is included as part of the generating capability of Buyer's Nine-Mile Point Electric Generating Station for the purpose of determining Capacity Equalization Payments due under the intercompany agreement.

(5) The words "Nine-Mile Point Electric Generating Station" referred to hereinbefore and hereinafter shall mean Buyer's three present steam-electric generating units which have a generating capacity of seventy-four (74), one hundred and seven (107), and one hundred and thirty-five (135) megawatts, and Buyer's new seven hundred and fifty (750) megawatt steam-electric generating unit, which said new unit is currently being installed and scheduled for completion on or before January 1, 1971 at the Nine-Mile Point Electric Generating Station, or as many of the aforesaid units as may be in operation from time to time during the term of this contract, all of which units are, or shall be located in Sections 5 and 6, Township 13 South, Range 23 East, Jefferson Parish, Louisiana, as provided for herein.

(6) The word "gas" shall mean natural gas produced from either gas wells or oil wells.

(7) The letters "MCF" shall mean one thousand cubic feet.

(8) The term "British Thermal Unit" or "BTU" shall mean the amount of heat required to raise the temperature of one (1) pound of water one degree (1°) Fahrenheit at sixty degrees (60°) Fahrenheit.

(9) The term "total heating value" shall mean the gross

number of British Thermal Units, sometimes hereinafter referred to as BTU, produced by the combustion at constant pressure, of the amount of gas, saturated with water vapor, which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit and under the standard gravitational force (acceleration 980.665 cm. per sec. per sec.), with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas in air, and when the water formed by combustion is condensed to the liquid state, corrected to a water-vapor-free basis and expressed at a pressure base of 15.025 psia.

(10) The term "fuel energy requirements" shall mean the fuel energy, as determined by the total heating value contained in the quantity of all natural gas, fuel oil, coal and any other type of fuel substance, which can be utilized or is needed by Buyer from time to time during the term hereof for the operation of Buyer's Nine-Mile Point Electric Generating Station. Commencing with the date of Commercial Operations and continuing during the term hereof, Seller will be obligated to make available to Buyer and Buyer will be obligated to purchase, at the point of delivery provided for herein, gas to supply sixty-six and two thirds per cent (66⅔%) of the fuel energy requirements, as defined herein, of Buyer at its Nine-Mile Point Electric Generating Station, but not in excess of the maximum quantities set forth in Article III herein.

Article II

Source of Gas

1.(a) Seller shall have the right or option at its election from time to time to deliver gas from fields, or other sources, at the delivery point as provided herein; connecting at its option, from time to time, such fields or other sources of supply.

(b) It is the intent of the parties hereto that no particular field, nor particular gas reserves, are committed to the performance of this contract.

Article III

Sale of Gas

1.(a) Subject to and in accordance with the terms, conditions and limitations set forth in this Article III, Seller will make available for delivery to Buyer at its said Nine-Mile Point Electric Generating Station, the following volume of gas per Contract Year and Buyer agrees to purchase and take from Seller at the delivery point hereinafter provided for, gas to the extent necessary to supply sixty-six and two-thirds per cent (66⅔%) of Buyer's fuel energy requirements for the said Nine-Mile Point Electric Generating Station up to and not to exceed the following volume of gas per Contract Year:

(i) For the first ten (10) Contract Years beginning from the date of commencement of Commercial Operations of Buyer's new 750 megawatt steam-electric generating unit as defined in Article I (5) hereof, or January 1, 1971, whichever date occurs first, that volume of gas which contains forty-three (43) trillion British Thermal Units per Contract Years.

(ii) For the five (5) Contract Years next succeeding the period set forth in sub-paragraph (i) of this Paragraph 1(a), Article III, that volume of gas which contains thirty-seven (37) trillion British Thermal Units per Contract Year, and

(iii) For the five (5) Contract Years next succeeding the period set forth in sub-paragraph (ii) of this paragraph 1(a); Article III, that volume of gas which contains twenty-eight (28) trillion British Thermal Units per Contract Year.

(b) Buyer shall purchase and take from Seller, or pay Seller for, whether taken or not, the following minimum volume of gas per Contract Year:

(i) For the first ten (10) Contract Years beginning from the date of commencement of Commercial Operations of Buyer's new 750 megawatt steam-electric generating unit as defined in Article I (5) hereof, or January 1, 1971, whichever date occurs first, that volume of gas which contains twenty-one and five-tenths (21.5) trillion British Thermal Units per Contract Year, or an annual minimum volume of gas which contains that amount of

British Thermal Units equal to sixty-six and two-thirds per cent of Buyer's annual fuel energy requirements for the said Nine-Mile Point Electric Generating Station, whichever volume of gas is the greater.

(ii) For the five (5) Contract Years next succeeding the period set forth in subparagraph (i) of this Paragraph 1(b), Article III, that volume of gas which contains eighteen and five-tenths (18.5) trillion British Thermal Units per Contract Year, or an annual minimum volume of gas which contains that amount of British Thermal Units equal to sixty-six and two-thirds per cent (66⅔%) of Buyer's annual fuel energy requirements for the said Nine-Mile Point Electric Generating Station, whichever volume of gas is the greater, and

(iii) For the five (5) Contract Years next succeeding the period set forth in subparagraph (ii) of this Paragraph 1(b), Article III, that volume of gas which contains fourteen (14) trillion British Thermal Units per Contract Year, or an annual minimum volume of gas which contains that amount of British Thermal Units equal to sixty-six and two-thirds per cent (66⅔%) of Buyer's annual fuel energy requirements for the said Nine-Mile Point Electric Generating Station, whichever volume of gas is the greater.

It shall be conclusively presumed for the purposes of this Article III, sub-paragraph 1(b), that the gas which Buyer is obligated to pay for, although not taken as provided for hereinabove, would have met the contract specifications and BTU content. Subject to the terms and provisions of Article IV (1), if by reason of Force Majeure, as defined herein, Seller is unable to deliver gas to Buyer, or Buyer is by reason of Force Majeure unable to purchase and take delivery of gas hereunder on any day or days during the Contract Year, then the respective annual minimum quantities for which Buyer is obligated to pay for shall be reduced to the extent that the day or days (any portion of a day counting a full day) during which deliveries are suspended bears to the total number of days in the Contract Year.

Since it will not be practical for Buyer to determine precisely its energy fuel requirements in advance, it is agreed that at the close of each month Buyer shall report to Seller in writing the total energy fuel requirements at

its Nine-Mile Point Electric Generating Station during the previous month. If any such report indicates that the quantities of gas delivered to Buyer by Seller during a particular month were less than the quantities of gas which Buyer was obligated to purchase hereunder from Seller, then Buyer shall use its best efforts to take from Seller during the following month, in addition to the quantities of gas which Buyer is obligated to take, an additional quantity of gas which will offset such deficiency in take which occurred in the previous month.

(c) It is understood and agreed by Buyer and Seller that if during the term hereof Buyer actually takes delivery of gas less than the specific stated minimum quantities recited in sub-paragraph (i), (ii), and (iii) of paragraph 1(b) of this Article III, Buyer shall not have the right to offset such deficiencies against its takes during the next succeeding contract year; it being the intent hereof that Buyer shall not have the right to offset any deficiencies which are less than said stated quantities whether such stated quantities are more, or, less than sixty-six and two-thirds per cent ($66\frac{2}{3}\%$) of Buyer's fuel energy requirements for a particular contract year. However, subject to the other provisions of this paragraph, if during any contract year, Buyer actually takes delivery of gas less than the annual minimum quantity of sixty-six and two-thirds per cent ($66\frac{2}{3}\%$) of Buyer's fuel energy requirements for such contract year, provided said annual minimum quantity is not less than the stated minimum quantities previously referred to herein which it is required to pay for, Buyer shall have the right to offset such deficiency against Buyer's take during the next succeeding contract year by taking and purchasing from Seller a quantity of gas equal to said deficiency, in addition to the aforesaid annual minimum quantity Buyer is obligated to take during said year, without again paying therefor, and provided further Buyer shall pay Seller for any differential in price between that upon which payments were made and that applicable at the time of the taking.

Seller shall, under no circumstances be required to deliver gas to Buyer in excess of the maximum quantities applicable hereunder.

(d) It is further understood and agreed by Buyer and Seller that in the event Buyer actually takes delivery of

gas in any contract year in excess of sixty-six and two-thirds per cent (66⅔%) of Buyer's fuel energy requirements for a particular contract year, and provided said sixty-six and two-thirds per cent (66⅔%) of Buyer's fuel energy requirements exceeds the specific stated quantities recited in sub-paragraph (i), (ii) and (iii) of paragraph 1(b) of this Article III, and which gas is not being utilized to offset any previous deficiency in take, then Buyer shall have the right to offset such excess quantity of gas taken from Seller against any deficiencies which may occur in the following contract year.

2. Seller shall make available for delivery hereunder, and deliver to Buyer when requested, the following maximum volumes of gas:

(i) For the first ten (10) Contract Years beginning from the date of commencement of Commercial Operations of Buyer's new 750 megawatt steam-electric generating unit as defined in Article (I) (5) hereof, or January 1, 1971, whichever date occurs first, that hourly maximum volume of gas which contains seven and one-tenth (7.1) billion British Thermal Units provided that the daily take of Buyer does not exceed one hundred and forty-two (142) billion British Thermal Units.

(ii) For the five (5) contract years next succeeding the period set forth in sub-paragraph (i) of this Paragraph 2, that hourly maximum volume of gas which contains seven and one-tenth (7.1) billion British Thermal Units provided that the daily take of Buyer does not exceed one hundred and twenty-three (123) billion British Thermal Units.

(iii) For the five (5) Contract Years next succeeding the period set forth in sub-paragraph (ii) of this Paragraph 2, that hourly maximum volume of gas which contains seven and one-tenth (7.1) billion British Thermal Units provided that the daily take of Buyer does not exceed one hundred and six (106) billion British Thermal Units.

3. In the event that one or more of the aforesaid steam-electric generating units which are or shall be located at said Nine-Mile Point Station are placed on standby status, or permanently abandoned, then the quantities set forth in sub-paragraph 1(a) and paragraph 2 of this Article III, above, shall be reduced by the average quantity fuel energy

requirements used yearly, hourly, and daily in such unit or units during the preceding six contract years. In addition, the stated annual minimum quantity provided in subparagraph 1(b) above shall be reduced proportionately with the reduction of the annual maximum quantity provided in sub-paragraph 1(a) above. If any unit placed on standby basis should be subsequently returned to service, then the aforesaid quantities shall be increased by the same amounts during the time when such unit is in service.

4. Buyer shall notify Seller, through its duly authorized representative, in writing or by telegram, or orally in person, or by telephone, at Seller's expense, if any, of changes in fuel requirements of Buyer hereunder.

Further, if Seller is required to make gas nominations to the present, or successor, regulatory body, or bodies, of the State of Louisiana, Buyer shall furnish Seller with the estimate of its fuel requirements for the period in which such nomination is required.

ARTICLE V

Term

This contract shall become fully effective and binding upon execution hereof and shall continue in full force and effect for a period of twenty years, from the first day of the month following the month in which Commercial Operations are commenced for the aforesaid 750 megawatt steam-electric generating unit or January 1, 1971, whichever date occurs first, unless otherwise terminated in accordance with the provisions herein set forth in this contract.

Filed
June 11, 1971

* * * * *

CERTIFICATE

I, P. E. Grimm, in my capacity as Assistant Regional Manager of Texaco, Inc., Producing Department, Southeast Region, have custody of the records of the Gas Department, which include Gas Sales and Purchase Contracts and all related and other agreements, and I hereby certify that this is a true copy of certain provisions of that certain Gas Sales and Purchase Contract dated May 22, 1970 between

Texaco Inc. and Louisiana Power & Light Company, specifically, the Preamble and Articles I, II, III and V.

/s/ P. E. Grimm
P. E. Grimm

Sworn to and subscribed before me on this 28th day of May, 1971.

/s/ Clement R. Thome
Notary Public

* * * * *

Gas Sales and Purchase Contract

This Agreement made and entered into this 22nd day of May, 1970, by and between TEXACO, INC., a corporation of the State of Delaware, herein represented by P. E. Grimm, its Attorney-in-Fact, hereinafter referred to as "Seller," and LOUISIANA POWER & LIGHT COMPANY, a corporation of the State of Florida, herein represented by E. A. Rodrigue, its President, hereinafter referred to as "Buyer."

Witnesseth:

Whereas, under date of May 7, 1968, Texaco, Inc., as Seller, and Louisiana Power & Light Company, as Buyer entered into a certain contract to purchase and receive from Seller natural gas to supply sixty-six and two-thirds per cent (66⅔%) of the fuel energy requirements in the operation of Buyer's Nine Mile Point Electric Generating Station, as therein defined, located in Section 5 and 6, Township 13 South, Range 23 East, Jefferson Parish, Louisiana; and

Whereas, Buyer represents that a second new steam-electric generating unit having a generating capacity of 750 megawatts (hereinafter referred to as Fifth Unit) will be installed at said Nine Mile Point Electric Generating Station and is scheduled for operation on or before January 1, 1973; and

Whereas, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller natural gas to supply the total fuel energy requirements in the operation of Buyer's said Fifth Unit, as more fully defined subsequently herein and in accordance with the terms and provisions hereinafter set forth:

Now, Therefore, in consideration of the premises and of the mutual benefits, covenants and agreements herein contained, the parties hereto, Seller and Buyer, have agreed and do hereby agree as follows:

ARTICLE I

Definitions

(1) The term "Day" means a period of twenty-four (24) consecutive hours beginning and ending at eight o'clock a.m., local time. The reference date for any day shall be the date of the beginning of such day.

(2) The term "Month" means the period beginning at eight o'clock a.m., local time, on the first day of a calendar month and ending at eight o'clock a.m., local time, on the first day of the next succeeding calendar month.

(3) The term "Contract Year" shall mean a period of twelve consecutive months beginning at eight o'clock a.m., local time, on January 1, 1973 or eight o'clock a.m., local time, on the first day of the first month following the month in which Commercial Operations of Buyer's Fifth Unit are commenced, whichever date occurs first, and at eight o'clock a.m., local time, on each anniversary of said date. It is further provided that if Commercial Operations of Buyer's Fifth Unit as defined in Article I (5) hereof are commenced prior to January 1, 1973, then the first Contract Year shall include the period of time commencing with the date of commencement of Commercial Operations of Buyer's Fifth Unit to the first day of the following month and the succeeding twelve months.

(4) "Commercial Operations", as used herein, shall commence on the date on which the Fifth Unit, as hereinafter defined, is accepted by the Middle South System Operator for dispatching as part of the Middle South generating capability and is the same date that this aforesaid unit is included as part of the generating capability of Buyer's Nine-Mile Point Electric Generating Station for the purpose of determining Capacity Equalization Payments due under the intercompany agreement.

(5) The words "Fifth Unit" referred to hereinbefore, and hereinafter, shall mean Buyer's second new seven hundred and fifty (750) megawatt steam-electric generating unit, which said second new unit will be installed and scheduled for completion on or about January 1, 1978 at Buyer's Nine Mile Point Electric Generating Station.

(6) The word "gas" shall mean natural gas produced from either gas wells or oil wells.

(7) The letters "MCF" shall mean one thousand cubic feet.

(8) The term "British Thermal Unit" or "BTU" shall mean the amount of heat required to raise the temperature of one (1) pound of water one degree (1°) Fahrenheit at sixty degrees (60°) Fahrenheit.

(9) The term "total heating value" shall mean the gross number of British Thermal Units, sometimes hereinafter referred to as BTU, produced by the combustion at constant pressure, of the amount of gas, saturated with water vapor, which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees (60°) Fahrenheit, and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit and under the standard gravitation force (acceleration 980.665 cm. per sec.) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas in air, and when the water formed by combustion is condensed to the liquid state, corrected to a water-vapor-free basis and expressed at a pressure base of 15.025 psia.

(10) The term "fuel energy requirements" shall mean the fuel energy, as determined by the total heating value contained in the quantity of all natural gas, fuel oil, coal and any other type of fuel substance, which can be utilized or is needed by Buyer from time to time during the term hereof for the operation of Buyer's Fifth Unit, but not in excess of the maximum quantities set forth in Article III herein. Commencing with the date of Commercial Operations and continuing during the term hereof, Seller will be obligated to make available to Buyer and Buyer will be obligated to purchase, at the point of delivery provided for herein, gas to supply the fuel energy requirements as defined herein, needed for the operation of Buyer's Fifth Unit, but not in excess of the maximum quantities set forth in Article III herein.

In the event during the term hereof the fuel energy requirements, as defined herein, needed for the operation of Buyer's Fifth Unit should be in excess of the maximum quantities of natural gas set forth in Article III herein, and if Seller and Buyer are unable to reach an agreement

covering the sale and purchase of gas in excess of such maximum quantities, then Buyer shall have the right to use any type of alternate fuel that may be available to satisfy the fuel energy requirements needed for the operation of Buyer's Fifth Unit which are in excess of the maximum quantities of gas set forth in Arfiele III herein. However, it is clearly understood by the parties hereto that nothing contained in this paragraph shall obligate either party to negotiate for the sale and purchase of natural gas needed or required for the fuel energy requirements of Buyer in the operation of Buyer's Fifth Unit which are in excess of the maximum quantities of natural gas set forth in this contract.

ARTICLE II

Sources of Gas

1.(a) Seller shall have the right or option at its election from time to time to deliver gas from fields, or other sources, at the delivery point as provided herein, connecting or disconnecting at its option, from time to time, such fields or other sources of supply.

(b) It is the intent of the parties hereto that no particular field, nor particular gas reserves, are committed to the performance of this contract.

ARTICLE III

Sale of Gas

1. (a) Subject to and in accordance with the terms, conditions and limitations set forth in this Article III, Seller will make available for delivery to Buyer at the point of delivery provided for herein, the following volume of gas per Contract Year and Buyer agrees to purchase, pay for, and take from Seller at the delivery point hereinafter provided for, gas to the extent necessary to supply Buyer's entire and total fuel energy requirements for Buyer's Fifth Unit up to and not to exceed the following volume of gas per Contract Year:

(i) For the first consecutive five (5) Contract Years, that volume of gas which contains forty-six (46) trillion British Thermal Units per Contract Year.

(ii) For the five (5) consecutive Contract Years next

succeeding the period set forth in subparagraph (i) of this paragraph 1(a), Article III, that volume of gas which contains forty-two (42) trillion British Thermal Units per Contract Year.

(iii) For the five (5) consecutive Contract Years next succeeding the period set forth in subparagraph (ii) of this Paragraph 1(a), Article III, that volume of gas which contains thirty-eight (38) trillion British Thermal Units per Contract Year, and

(iv) For the five (5) consecutive Contract Years next succeeding the period set forth in subparagraph (iii) of this Paragraph 1(a), Article III, that volume of gas which contains thirty (30) trillion British Thermal Units per Contract Year.

(b) Buyer shall purchase, and take from Seller, or pay Seller for, whether taken or not, the following minimum volume of gas per Contract Year:

(i) For the first five (5) consecutive Contract Years, that volume of gas which contains twenty-nine (29) trillion British Thermal Units per Contract Year.

(ii) For the five (5) consecutive Contract Years next succeeding the period set forth in subparagraph (i) of this Paragraph 1 (b), Article III, that volume of gas which contains twenty-four (24) trillion British Thermal Units per Contract Year.

(iii) For the five (5) consecutive Contract Years next succeeding the period set forth in subparagraph (ii) of the Paragraph 1 (b), Article III, that volume of gas which contains twenty-four (24) trillion British Thermal Units per Contract Year, and

(iv) For the five (5) consecutive Contract Years next succeeding the period set forth in subparagraph (iii) of this Paragraph 1 (b), Article III, that volume of gas which contains eighteen (18) trillion British Thermal Units per Contract Year.

It shall be conclusively presumed for the purposes of this Article III, Paragraph 1 (b), that the gas which Buyer is obligated to pay for, although not taken as provided for hereinabove, would have met the contract specifications and BTU content. Subject to the terms and provisions of Article IV (1), if by reason of Force Majeure, as defined herein, Seller is unable to deliver gas to Buyer, or Buyer

is by reason of Force Majeure unable to purchase and take delivery of gas hereunder on any day or days during any Contract Year, then the respective annual minimum quantities for which Buyer is obligated to pay for shall be reduced to the extent that the day or days (any portion of a day counting as a full day) during which deliveries are suspended bears to the total number of days in the Contract Year. It is further provided, however, that the quantities of gas, if any, delivered and received on any day or days governed wholly or in part by Force Majeure shall not be considered in determining whether or not Buyer has complied with its obligation to purchase the annual minimum quantity during any Contract Year.

(c) It is understood and agreed by Buyer and Seller that if during the term hereof Buyer actually takes delivery of gas less than the stated minimum quantities recited in sub-paragraphs (i), (ii), (iii), and (iv) of Paragraph 1 (b) of this Article III, subject to the other provisions of this paragraph, Buyer shall have the right to offset such deficiency against Buyer's take during the next succeeding contract year by taking and purchasing from Seller a quantity of gas equal to such deficiency, in addition to the aforesaid annual minimum quantity Buyer is obligated to take during such year, without again paying therefor, and provided further Buyer shall pay Seller for any differential in price between that upon which payments were made and that applicable at the time of the taking.

Seller shall, under no circumstances be required to deliver gas to Buyer in excess of the maximum quantities applicable hereunder.

2. Seller shall make available for delivery hereunder, and deliver to Buyer when requested, the following maximum volumes of gas:

(i) For the first ten (10) consecutive Contract Years, that hourly maximum volume of gas which contains seven and one-tenth (7.1) billion British Thermal Units provided that the daily take of Buyer does not exceed one hundred and forty-two (142) billion British Thermal Units.

(ii) For the ten (10) consecutive Contract Years next succeeding the period set forth in subparagraph (i) of this Paragraph 2, that hourly maximum volume of gas which contains seven and one-tenth (7.1) billion British

Thermal Units provided that the daily take of Buyer does not exceed one hundred and twenty-eight (128) billion British Thermal Units.

3. Buyer shall give Seller as much notice as reasonably practicable through its duly authorized representative, in writing or by telegram, or orally in person, or by telephone, at Seller's expense, if any, of any changes in fuel requirements of Buyer hereunder. Further, if Seller is required to make gas nominations to the present, or successor, regulatory body, or bodies, of the State of Louisiana, Buyer shall furnish Seller with the estimate of its fuel energy requirements for the period in which such nomination is required.

Article V

Term

This contract shall become fully effective and binding upon execution hereof and shall continue in full force and effect for a period of twenty (20) Contract Years, unless otherwise terminated in accordance with the provisions herein set forth in the contract.

Transcript of Proceedings before the District Court

[caption omitted]

Proceedings had at Alexandria, Louisiana, before the Honorable Nauman S. Scott, United States District Judge, Western District of Louisiana, on May 27, A. D. 1971 beginning at 2:15 P. M.

[appearances omitted]

PROCEEDINGS:

THE COURT: Mr. Harvin, you are the mover so you may proceed.

MR. HARVIN: We didn't have much of an opportunity to get very far on leafing through these, Your Honor, but if you will give us just one more minute, I think I will be in a position to at least get copies to everyone.

THE COURT: That is all right.

MR. HARVIN: May it please Your Honor, I think that I can put in the record and give Your Honor some field for almost all of the exhibits that United will want to offer today. I may have to call upon one witness to give an explanation in connection with a couple of them but I will put that off until we can get through as much of it as I can.

THE COURT: All right, sir.

MR. HARVIN: Basically, the evidence that we are proposing to offer here is documentary in nature. It consists of records from the Federal Power Commission Proceedings which is variously referred to as RP71-29 or the curtailment proceeding first, and then when that one has been concluded, Federal Power CP71-89 which is the certificate proceeding in which the application has been made for the Commission to issue these certificates of convience and necessity for the service to the New Orleans area and we are offering these records in connection with the jurisdictional issue that is before the Court to demonstrate that the matters which are here at issue in this lawsuit are presently before the Federal Power Commission with these very pardons before the Federal Power Commission and at such time as is appropriate during the hearings, we will offer authorities to Your Honor that this is not only a

matter of the Commission's primary jurisdiction over these matters, but under the authorities that the Commission has the prerogative to hear and determine whatever necessary factual issues there are to decide its own jurisdiction in the first instance rather than having a separate court in what amounts to a collateral attack of doing so. All of the documentary evidence and the live testimony, too, that will be before Your Honor, will really be presented against the background of the serious crisis which has arisen in the national natural gas industry. The declining reserves through the country on the one hand and the increase of consumption on the other, I am not going to introduce evidence about this at this time, and in the interest of time, because these are matters of common knowledge which have been judicially noticed by the Fifth Circuit as recently as last year in 428 F.2d 407, which is commonly known as the Southern Louisianan Area Rate Cases. The curtailment proceeding, 71-29, was filed by United on October 26, 1970 and the first exhibit that we have to offer is United's petition for declaratory order before the Federal Power Commission on that date and what that petition does as is indicated on the second page, mid-way in the paragraph headed Roman numeral II, where I quote "It now appears that during the 1970, 1971 winter season, United will be obliged to curtail deliveries because of the national gas shortage and this curtailment will require implementation of section 12 of its tariff on a broad scale for extended periods of time. Commencing last summer, United informed its customers of the possibility of this curtailment and in recent weeks has informed each customer of United's specific plan to implement curtailment based on the best information currently available, including specific projected curtailment volumes for the individual customers for the first three months of the winter season." Over in the following paragraph, the point is made that the possibility of curtailment arises not from any shortage of any pipeline capacity but from a temporary shortage of field gas supply and that the impossibility of getting enough spot gas to supplement the needs, would require the curtailment program to be made effective on November 1, 1970, the first day of the winter season and the petition proceeds to deal with the national shortage, the steps that the Commission and awareness of the steps

that the Commission is taking to alleviate this and then sets out the order of curtailment on page four, paragraph four and the order of curtailment which becomes part of the bone of contention between the parties to this lawsuit arises in this way.

The first customers to suffer curtailment are industrial customers and gas used for industrial purposes including gas to generate the electricity which is used for industrial purposes, this is the first category of service that is recited here in the petition which will be affected. The petition points out that only industrial uses will be affected. We are not talking about curtailment of domestic consumption, it is industry that will have to be curtailed and it has attached to it, as Your Honor will see, numerous statistical pages setting forth information as to the take or consumption that has been involved and the amount expected to be curtailed, based upon the projections.

The next step in that proceeding was that on November 3, 1970, the Commission issued its notice of the filing of this petition for a declaratory order relating to the implementation of this curtailment program and we are offering that as the next exhibit. That is in effect, Your Honor, what—a notice that is served upon the customers and by that means they are made aware of the proceedings and given the opportunity, if appropriate, to intervene.

The next step in the development of this proceeding that we want to bring to Your Honor's attention as the third exhibit is the petition to intervene in behalf of Louisiana Power and Light Company. Now this petition, to intervene, is significant to this proceeding for the reason that it recites that LP&L has contracts with United for its supply of natural gas to the Sterlington Plant and to the Nine Mile Point Station in the New Orleans area. Those are precisely the contracts or the sales that are at issue in this lawsuit. Recited in the petition to intervene, we call to Your Honor's attention, from both the Sterlington contract and the Nine Mile Point contract for what are called the impairment of deliveries clauses from those contracts and the essential contention that is made, both in this petition to intervene before the Federal Power Commission and also in this lawsuit that is before the Court is that the curtailment plan violates the impairment of deliveries clauses in the contract for Sterlington and the Nine Mile Station.

Also raised by LP&L in the petition to intervene is the same contention that it makes here, that the Commission does not have jurisdiction over these sales because they constitute direct sales which are exempt under section one, one B, of the natural gas act. It is rather significant, I think and I would like to call to Your Honor's attention on the fourth page of the petition to intervene, at the bottom of the page, the paragraph headed Roman numeral IX, the last full sentence, however there may be certain jurisdictional aspects of United's curtailment program which could have a direct effect on LP&L which LP&L was stating is the reason why it should be allowed to intervene in this proceeding.

Now, the next step in the curtailment proceeding before the Commission and the fourth exhibit is the Commission's order providing for a hearing on the petition and on an amended petition which has been filed does not relate to the controversy between these parties but with another customer of United's, this order establishing the procedures for this curtailment hearing and permitting the intervention of the parties who are listed in the order, one of whom is Louisiana Power and Light. The order recites on page three that the urgency for the resolution of the questions presented by United's original and amended petition and the answers and motions in opposition thereto are clear. The 1970-1971 winter heating season has begun and United has stated that it is already put its curtailment program into effect under such circumstances as is appropriate. We order the holding of a prompt hearing in this matter in which United will present its evidence orally, subject to cross-examination and so on.

The hearing of live testimony, according to the record then began on December 21, 1970 and at that point, there was, on December the 22nd, there was a settlement proposal made in connection with the winter curtailment program and the portion of the transcript of that testimony, which states the essence of the settlement proposal is offered as the fifth exhibit. That settlement proposal was offered by all parties, save one, for these purposes we want to show, from the sixth exhibit that it was approved by Louisiana Power and Light Company, acting through its attorney in the Federal Power Commission's proceedings, Richard M. Merriman and the settlement proceeding

was also approved by the order of the Commission which is the next exhibit, #7, on December 29, 1970.

The procedure was carried one step further by the Commission's examiner's order of January 5, 1971, that continued the curtailment proceeding before the Commission while the settlement was being implemented. The settlement involved an attempt to acquire additional spot gas, Your Honor, to take care of some of the needs of the customers but still on a curtailed basis.

Then the next step on the proceeding is a telegraphic communication of January 8, 1971, from United to all of the parties in RP71-29, as Your Honor will see from that exhibit. United has—advises that it has succeeded in obtaining commitments for some spot purchase gas. It states that it will continue to exert its efforts to enlarge upon that amount but it says this of significance, that I call to the Court's attention. The parties must realize however, that these purchases will not completely alleviate the shortage on United's system and thus United will still have to impose curtailments in the future.

The next step in the proceeding, the next exhibit is the motion of United Gas Pipeline Company to revise the schedule for filing testimony in this hearing and the point in it that I want to direct to the Court's attention to, is set forth in the very first sentence of the motion. As indicated in its telegraph of January 8, 1971, United intends to file an amendment to its petition in this proceeding to cover curtailments beginning April 1, 1971. This amendment and related direct testimony to be filed on February 22, 1971.

The next exhibit is the presiding examiner's ruling with respect to that motion to revise the schedule of this proceeding and ordering that United's direct testimony, relating to the amendment shall be filed by February 22, 1971. The supplemental petition of United for declaratory order with exhibits and testimony attached is the next exhibit. It was filed on February 22. It was apprenticed, as indicated in the first paragraph of the exhibit. That it is made necessary by the fact that United's field supplies of gas continued to be insufficient to meet the demands of United's customers and thus it is necessary that United's curtailment program be extended from April 1, 1971 at least through October 31, 1971.

The earlier petition, the Court will recall, was for the

winter months and this carries it on through the summer months through to the beginning of what, in the industry, they call the heating season. Again, it emphasizes that we are talking about curtailing only gas used for industrial purposes and gas used to generate electricity for industrial purposes and again it has a detailed set of exhibits as to estimated deliveries to customers as to past experience and what is to be expected with respect to the curtailment and it contains the direct testimony of Mr. M. T. Belvin, Jr. who was the witness whose deposition was taken by Louisiana Power and Light earlier this week.

Now, at this point in connection with the curtailment proceeding, I would like to call Mr. W. B. Cassin, who is the vice-president and general attorney for United, who has been in charge of United's work for that proceeding, Your Honor.

W. B. Cassin

Called as a witness by United Gas Pipeline Company and Pennzoil United Incorporated and having been first duly sworn, testified as follows:

Direct Examination

Mr. Harvin: With my announcement of Mr. Cassin's identity, may we dispense with the formalities?

The Court: Yes, sir.

By Mr. Harvin:

Q. Mr. Cassin, directing your attention to the curtailment proceedings before the Federal Power Commission, will you tell the Court approximately the number and give him some description of the nature of the business of the intervenors other than Louisiana Power and Light Company?

A. Yes, sir, there are a total of fifty intervenors. Seventeen are direct industrial customers of United Gas Pipeline Company, five are pipeline customers of United Gas Pipeline Company, six are what we call city gate customers or distributors within municipalities or customers of United Gas Pipeline and there are twenty-two whom I put in a miscellaneous category. They are not directly related to United Gas, Your Honor, but they are city gate customers of our pipeline such as Memphis Gas Light and

Waterworks; Laclede that serves St. Louis and others, including pipelines included in that twenty-two are pipeline company customers of ours and some even further down the road such as pipeline customers of our customers such as Consolidated Natural Gas, Columbia Gas System, Algonquins Gas, and major distributors in the east, and public service commissions, and public service commissions such as the New York Public Service Commission.

Q. Mr. Cassin, directing your attention for a moment to the original curtailment program as proposed by United in the original petition in the curtailment proceeding, that is, for the winter season.

A. Yes, sir.

Q. Will you tell the Court the purpose of that curtailment program?

A. Of the curtailment program?

Q. For the 1970 and 1971 winter season.

A. The program was made necessary because United did not have enough gas available to purchase from its field suppliers or in storage to meet the anticipated needs of United's customers in the heating season of 1970 and 1971.

Q. Was there any element of storage of gas involved in the 1970-71 winter curtailment program?

A. Yes, sir, there was.

Q. Tell us about that, please.

Mr. Carter: Excuse me just a moment, we would like to enter an objection and I had better state to the Court Reporter, this is Andrew P. Carter on behalf of Louisiana Power and Light Company. I believe we are going a little beyond the question of jurisdiction.

Mr. Harvin: This testimony is really being offered to try to give the Court as thorough an understanding as we can of just what has been involved in this proceeding before the Commission, rather than on the merits of those matters.

The Court: The objection is overruled, as long as the questions are related strictly to that, developing what those needs are.

The Witness: United has two storage fields; a smaller one in Jackson, Mississippi and a very large one in Bistineau in Northern Louisiana, and those fields hold a—however, a faineant quantity of gas. United found itself

unable to fill those fields last summer and United found itself in a position where it was projected that those fields would be completely drained fairly early in the winter season, in January, if the curtailment program were not effected in November and applied on a rateable basis, in order to conserve those storage supplies.

By Mr. Harvix:

Q. All right. Now, what part did the storage of gas play in the curtailment program announced in the supplemental petition that was filed in late February of this year, that is, the curtailment program beginning April 1st to run through the summer?

A. It played a very large part; as I said, United was unable to fill its storage fields in the summer of 1970, and as United entered the summer period of 1971, it found itself faced once again with the prospect of having the demands from its customers upon its field supplies, this summer, being so large that they would once again be unable to fill these storage fields. To give some numbers that are reflected in the proceedings at the Commission, the Jackson storage field holds approximately five million cubic feet of gas, the Bistineau storage field holds approximately ninety billion cubic feet. While we were able, pretty well, to fill the Jackson field, which is obviously the much lesser of the two fields, the Bistineau field was only filled to approximately sixty-five billion cubic feet, some twenty-five billion cubic feet below its capacity in 1970. We projected at the time of the supplemental program, the supplemental filing was made that we would not even reach that level in Bistineau this year and therefore, in order to assure that Bistineau was filled, a curtailment program was projected for the period of April through October of 1971.

Q. And will you tell the Court whether or not it is United's position, in the curtailment program, before the Commission that if the curtailment, or what United's position is on this point, if the curtailment program is not allowed or interfered with this summer, what will be the effect upon the coming heating season, beginning November 1.

Mr. Carter: Your Honor, may I just make my objection general to all of this?

THE COURT: Yes, sir, I think we are getting a little bit away from the juri-dictional and I think I will just specifically sustain that objection to the question.

BY MR. HARVIX:

Q. Then, Mr. Cassin, after the filing of the supplemental petition late in February, did the Commission commence a hearing upon the summer curtailment program?

A. Yes, sir, on March 31, a hearing commenced, in March 31, 1971, a hearing commenced before a presiding examiner of the Federal Power Commission at which all parties were allowed to cross examine United's witnesses with respect both to the winter curtailment program and the summer curtailment program and all testimony that had previously been filed and that hearing went on and filled two thousand and two hundred pages of transcript. It went on approximately four weeks and was an exhaustive hearing.

Q. Which I suppose, numerous technical exhibits attached to the transcript?

A. Yes, sir, the exhibits run in number at, some seventy and some many hundreds of pages in extent.

MR. HARVIX: May I inquire of the Commission's counsel here, Your Honor, if they have a set of the transcript of these hearings?

THE COURT: Yes, sir.

MR. GOOCH: Yes, Your Honor, we do.

MR. HARVIX: Would counsel please point it out to the Court?

MR. GOOCH: This stack covers the orders of the Commission, the exhibits filed and the testimony received in the curtailment case.

MR. HARVIX: We don't really want to clutter the record, Your Honor, by attempting to put that entire twenty-two hundred pages in there but if there is any inquiry about any of it or if there is any reference to be made to it, we are perfectly willing for it to be offered.

BY MR. HARVIX:

Q. Mr. Cassin, is it correct that the record in this lawsuit will reflect that it was filed on March 31, 1971, the same day that this hearing began before the Federal Power Commission?

A. Yes, sir, that is correct.

Q. Now; you said, I think, that that hearing ran until April 22nd of this year?

A. Yes, sir.

Q. And by that time, how much of the hearing had been concluded, what remains to be done?

A. The cross examination of United's direct case has been completed. By that time the remaining steps in the proceedings are the introduction of direct cases by the FPC staff and intervenors which are scheduled to occur Monday, May 24, and in fact did occur on that day. They distributed their prepared testimony and exhibits which are quite extensive. The next step is that if United has any rebuttal to the testimony put in by the intervenors and staff on Monday, we have until June 11th to file and distribute that rebuttal testimony and prepare for—and on June 21 a hearing will commence on this testimony and exhibits that have been subsequently introduced and this will be followed by either a decision by the examiner or if that is omitted on motions of the parties, a decision by the Commission of the questions presented in that proceeding.

Q. Mr. Cassin, in connection with the matters at issue in this lawsuit, there has, from time to time, been reference to what has been referred to as Order 431, issued by the Federal Power Commission on April 15, 1971. I have just handed the Court a copy of that order as the next exhibit and I would ask you to explain briefly what that order is.

A. This order, which was issued without prior notice, as is evident, propagates a statement of general policy of the Commission. The Commission first notes that the system which I described on United's system of inability to fill storage is one that affects the entire pipeline industry, virtually all pipelines and it is one that the Commission is concerned about and they felt that something needed to be done about it.

Q. And this was not in the curtailment proceedings?

A. No, sir. This came like a bolt out of the blue. It was issued—came public about 11:00 o'clock one morning as we were having our morning break from the curtailment proceedings and it created quite a stir.

Q. And what was United directed to do?

A. Specifically, as the ordering portion begins on page two of the order, and on page three, United being a natural gas pipeline company, is directed to make every reasonable effort to fill all storage fields supplied by us to capacities

sufficient to meet anticipated heating season demands. We are also directed to file a written report within 30 days, telling them how we intend to accomplish this and to file tariff sheets setting out a curtailment procedure or a statement indicating that the tariff sheets were already filed, that would be our curtailment plan. They also directed us to give consideration to curtailment of volume that is equivalent to uninterrupted sales and curtailment of large boiler fuel sales where alternate fuels were available. The third paragraph is a technical provision that indicates how we should go about buying spot gas.

The fourth provision indicated that volumetric limitations at current levels should be imposed on all sales where a curtailment program was in effect. They indicated that they, in future rate cases, would re-examine the way that they allocated cost to industrial—between industrial and non-industrial sales and finally exhorted this generally to everything that we possibly could do to alleviate the situation.

Q. All right, did you respond to Order #431 within the time stipulated by the Commission?

A. Yes, sir, we did. The 30th day fell on a Saturday and on the 17th of June, we filed our response which was within the time allowed.

MR. HARVIN: Your response is offered as the next exhibit, Your Honor, it is a letter addressed to the Commission and dated May 14th, which you have before you.

BY MR. HARVIN:

Q. Mr. Cassin will you briefly tell the Court the nature of the response.

A. In the response we discussed our reaction. We said that while it could be argued that our summer curtailment program should be modified to comport with what the Commission indicated, that they thought that the way that the curtailment program should go forward—we felt that since all of our customers knew what this program was, they had all had opportunities to cross examine our witnesses on it and since the proceeding on—determining whether this was an appropriate program or not was well advanced and proceeding on an expeditious basis, that we could not propose to change it.

We had previously indicated that we did not necessarily want to change our program applicable to our winter season but we felt compelled to do so by Order #431 and therefore

we proposed certain amended tariff sheets that would take effect on November 1, 1971. I might say also, I wanted to mention one part of Order #418, a very important portion——

Q. You mean Order #431?

A. Order #431, in paragraph number seven on page four, if Your Honor could see that, it says "Jurisdictional pipelines have the responsibility in the first instance to adopt a curtailment program by a filing of appropriate tariffs. Such tariffs, if approved by the Commission, will control in all respects, non-withstanding inconsistent provisions in sales contracts, jurisdictional and non-jurisdictional entered into prior to the date of the approval of the tariff." Therefore, we stated that in filing these tariff sheets, because of that language in the Commission order, we were amending, not only our tariff but, as we saw it, our direct sales contracts. The two principal changes that we made were—in the order of priority, were to accord higher priority to industrial gas that was used for process purposes. In other words, where—well to take a specific example, where Monsanto turns methane, that they derive from natural gas that they buy from us, into nylon. (1) Where the natural gas is converted and used as a raw material, rather than as a boiler fuel. The second change was since the alleviation of the shortage on United system had required United to purchase spot gas at very high prices and future alleviations may entail such steps as construction of large plants for the gasification of naphtha or such very expensive measures as this and since the Commission had told us in plain terms, in paragraph five of Order #431 that they intended to review the allocation of cost between—that they had established in the 1960's between industrial and non-industrial gas sales, we felt compelled to make it clear that industrial users of our gas, direct industrial customers of ours, would have to be willing to pay, during the curtailment period, as much for the gas as our domestic city gate customers paid for that gas in order to enjoy the same priority that they have had last year.

Q. That was filed in the proceeding in response to Order 431?

A. Yes, sir.

Q. That was not filed in the curtailment proceeding?

A. No, sir.

Q. All right, now, returning for just a moment to the cur-

tailment proceeding, I believe you mentioned that under the schedule that the various intervenors who desired to file testimony in that proceeding were required to do so by May 24, 1971?

A. Yes, sir.

Q. And on that date, was there filed in the curtailment proceeding, testimony by Mr. G. H. Box on behalf of Mississippi Power and Light Company?

A. Yes, sir. Mr. Box was the vice-president of the Mississippi Power and Light Company, his testimony was filed on that date.

MR. HARVIN: Which we offer as the next exhibit, Your Honor, again in connection with the jurisdictional issue and we point out as indicated by Mr. Box on page three of his testimony, that Mississippi Power and Light is one of the four operating subsidiaries of Middle South Utilities Incorporated. The others are Arkansas Power and Light Company, Louisiana Power and Light Company and New Orleans Public Service, Inc. Now turning, Your Honor, from the curtailment proceeding to the proceeding before the Federal Power Commission which is numbered CP71-89 and which is the proceeding in which United has applied for certificates of convenience and necessity for the purpose of serving the New Orleans area which is undisputed as an area that includes one of Louisiana's power and light stations that is involved in this lawsuit before Your Honor, the Nine Mile Power Station.

As the first exhibit, we offer a letter from the secretary of the Power Commission to Mr. John C. Nelson, the executive vice-president of United Gas Pipeline Company, on the date of September 17th——

MR. BARBER: May it please the Court, may we ask Mr. Harvin what exhibit number was the last one? I think we may have lost count.

THE COURT: Thirteen, I think.

MR. HARVIN: I think Mr. Harvin has lost count also, Your Honor.

MR. MALLORY: I have fifteen.

MR. BARBER: That is what I have.

THE COURT: Fifteen, then.

MR. HARVIN: In that letter, the Commission's secretary wrote Mr. Nelson as follows: "A review of our records failed to disclose any filing under sections seven of the natural gas act by United Gas Pipeline Company in com-

pliance with the holding of the Court in the Florida parishes case, 359 Federal Second 525. Please advise us within ten days of your disposition in this matter so that the Commission may take whatever action it deems appropriate." And for Your Honor's convenience I have a reproduced copy of the Florida parishes decision which is referred to in that letter.

By Mr. Harvin:

Q. Mr. Cassin, did United respond to that letter from the Commission?

A. Yes, sir, we did. On October 1, we responded to the letter by saying that we would file, very shortly, a document in compliance with the holding of the Court in the Florida parishes case and we did on October 1, file an application for a certificate covering the facilities that had previously been considered local in nature, lying largely in Southern Louisiana but there were also some in Texas and this certificate also—this certificate application covered not only the facilities but also the jurisdictional sales and services specifically including what we considered to be jurisdictional sales and services to our customers—to our direct industrial customers.

Mr. Harvin: We hand the Court, as our next exhibit, the application of United Gas Pipeline Company, for certificate of public convenience and necessity in CP71-89. This was filed, Your Honor, on October 1, 1970 and I would ask the Court for a moment to turn to page three of that exhibit where it is noted in an earlier proceeding the Commission had held, that the United sales in the Florida parishes of Louisiana were made in inter-state commerce and were subject to its jurisdiction, which order was subsequently affirmed on appeal and the opinion, a copy of which the Court has before it; and that the reasons pointed to by the Commission for holding those earlier, subject to its jurisdiction indicated that other sales and facilities of United previously regarded as within the jurisdiction of the states of Louisiana and Texas are subject to the jurisdiction of the Federal Power Commission.

Among those being, that the gas sold as part of a single uniform stream flowing through United's inter-state pipelines from the point of purchase in Louisiana, whether on shore or off shore to United's customers in other states and that once gas has been sold by a producer to an inter-state commerce, even though some of that gas was sold in

state commerce, even though some of that vas was sold in the states in which it was produced and as is indicated in paragraph five of this application, United's sales in south Louisiana and south Texas are regulated in those respects, respective states by the appropriate commission, as was the fact in the earlier Florida Parishes litigation.

All the gas delivered to these locally regulated sales is produced, transported, sold, and consumed wholly within the state exercising regulatory jurisdiction, excluding consideration or resolution of the effect of offshore south Louisiana production; however, part of the gas delivered to the customers in south Louisiana and south Texas is transported at sometime through pipelines which carry gas in a co-mingled stream, which stream thereafter crosses a state line and part of the gas delivered to these particular sales, is purchased from producers, issued certificates of public convenience and necessity by this Commission, authorizing sale of the gas in inter-state commerce.

And in paragraph six, on the next page, that considering those facts and the Commission's earlier reasoning in the Florida parishes decision, it is apparent that all United's transmission facilities, in south Louisiana and the services it performs through those facilities are inter-state in character and are subject to regulations by this Commission to the extent authorized by the act. The document, as the Court can see, is a very lengthy one. It has numerous exhibits attached to it, including many drawings of the entire system, some of which I am sure we will get to a little later in this hearing.

Now, again upon the filing of this application, the Commission issued its notice which was served upon customers and interested parties which is offered as the next exhibit, that notice being on October 15, 1970.

The next exhibit is the petition to intervene, filed in CP71-89 by the Public Service Commission of the State of New York, which was filed on December 18, 1970.

The next exhibit is the petition to intervene which was filed by Louisiana Power and Light Company on February 12, 1970, 1971 I beg your pardon, which recites that LP&L did not learn of the petition to intervene of the Public Service Commission of New York until February 8, 1971, which petition was filed 43 days after the date fixed in the notice of hearing. The limitations and conditions which the New York Commission requests on any certificate to

United in this proceeding will seriously affect LP&L and it wishes to oppose said petition unless the request of the New York Commission is denied without hearing.

Then, in its petition to intervene, LP&L again recited its Sterlington and Nine Mile Point contracts with United it again recited the impairment of delivery clauses in those contracts which it urges, are being violated here and it took the position, as it had in its petition to intervene in the curtailment proceedings, that the Federal Power Commission had no jurisdiction of the natural gas supplied to LP&L under the Sterlington and Nine Mile Point contracts, these being contracts for the direct sale of natural gas for consumption, exempt under section 1B of the Natural Gas Act.

I would call to the Court's attention that there is nothing in that petition to intervene nor is there anything in the petition to intervene in the curtailment proceeding filed by LP&L which states any other exemption or basis for lack of jurisdiction of the Commission, such as the point made by Mr. Carter in the course of our conference immediately before this hearing, namely that the Nine Mile Station is served entirely by a local system with local gas and I would also point out, I hope without necessity of reading the entire original complaints and supplemental complaint filed in this cause, that there is nowhere in either of those complaints any reference to any basis of lack of jurisdiction of the Commission except on the ground that an industrial direct sale is exempt under section 1B of the Gas Act.

By Mr. Harvin:

Q. Mr. Cassin, did the Commission hold conferences concerning the certification proceeding after the petitions for intervention were due to have been filed?

A. Yes, sir, there were two informal settlement conferences held among all parties and the staff of the Commission on—the first one was on May 4, 1971 in Washington and the second one on May 19, 1971 in Washington.

Mr. Harvin: And the next exhibit is the Commission's order of May 14, 1971, fixing the date of hearing and granting intervention.

By Mr. Harvin:

Q. Mr. Cassin, can you tell us about the intervenors in that case, 71-89?

A. Yes, sir, as the Commission's order reflects, there are about twenty or twenty-two intervenors as of May 14th who were allowed to participate. Since that time we have gotten one or two more intervenors. These intervenors are five of United's direct industrial customers and now we have added three more to make it eight direct industrial customers, three pipeline customers of United, seven city gates who are customers of United and six in the miscellaneous category in the New York Public Service Commission, the Louisiana Public Service Commission, the City of New Orleans, Laclede Gas Company Service in St. Louis, and then some of the eastern pipelines and distributors who receive gas from United's pipeline company customers.

Q. All right; I think that on exhibit, listed on page two, it is correct, is it not, that in addition to Louisiana Power and Light and another member of the middle south, New Orleans Public Service Inc., is listed as having filed its petition to intervene.

A. Yes, sir, and they were allowed to intervene.

MR. HARVIN: I call the Court's attention to page three of that order in which it is recited, with respect to the allowance of the petitioners to intervene, in addition other petitioners allege that the Commission does not have jurisdiction over certain transactions that are reflected in United's application and that they intend to demonstrate that these transactions are beyond the Commission's jurisdiction under existing laws. The Commission is of the opinion that the afore-mentioned petitioners have shown good cause for their late filing.

The Commission will set this matter down for an early hearing in which it will require that the resolution of the jurisdictional status of the facilities involved herein be accorded the highest order of priority as well as whether the present and future public convenience and necessity requires permanent authorization of any or all of the deliveries in whole or in part and the Commission therefore required that United File it's direct case on or before May 24, and that cross examination commence on June 7 of this year.

The next exhibit is United's filing of May 24, 1971, in response to that Commission order of May 14th. Attached to the covering letter, there, Your Honor, is the prepared

testimony of J. H. Ectorhoff, which I would ask the Court to turn to for a moment and if Your Honor would open up the first map that is attached to that testimony and let me go through a short exercise here that perhaps, I hope at least will shed some light on some of the testimony that Your Honor may subsequently hear during the course of this afternoon.

This is Mr. Ectorhoff's description of the map, Your Honor. It shows the pipelines owned and operated by United Gas Pipeline Company, at least in the New Orleans, Jackson, Shreveport and Victoria divisions. It shows other data including community service—communities served, major industrial deliveries, compresser stations, extraction plants, gas field supplying pipeline systems as well as operating divisions, boundaries and district lines and the legend sets up the various symbols that identify these items. You will note that it has an unshaded area in South Louisiana which is labeled New Orleans Division. The lines colored in green in the New Orleans District of the New Orleans division were previously considered local in nature and have not been certificated by the Commission. In this application United seeks certification of such facilities together with the certification of the jurisdictional services rendered thereby. The purple lines shown in the Lafayette District of the New Orleans Division show facilities which, together with the services rendered thereby, have been only partially certificated and their total certification, for both the facilities and services, is sought in this proceeding to the extent of the Commission's jurisdiction.

The Court will notice that there are a number of points designated A through X, they are in a yellow or orange color and they are major connections between inter-state facilities which have been certificated and facilities that are sought to be certificated in this application. It is at such points that a single uniform stream of gas is split with some of it continuing on to markets outside of the state and some of it to markets within the state. There is more information in here about other districts and divisions but we are principally concerned, in this lawsuit, I think and as to this point that is before Your Honor, only with this New Orleans Division Area. Mr. Ectorhoff goes on to point out, and I don't want to take a lot of time and go into a lot of detail about this phase of his testimony and I am offering it only to show what is before the Commission in

the New Orleans district, old district five. Mr. Ecterhoff gives figures in his answer in which he concludes that there will be a deficiency in peak day supply in that district from just intra-state facilities for 1971-72 and 1972-73 of 589 MCF per day and 681 MCF per day respectively and he is there, on page eleven asked how that deficiency would be handled. "You have indicated previously that any deficiency for the intra-state system will have to be supplied from your inter-state operations. Where would the increases from the inter-state system? This additional inter-state supply, to meet the deficiency in the City of New Orleans area, would have to come from the Egatian Bay-Lafrette, Mobile system including all fields connected thereto."

And then, in the next exhibit, which is marked JHE-4, Your Honor, headed New Orleans District inter-state facilities to intra-state facilities, first co-mingling occurred July 25, 1965. It is a one page exhibit.

THE COURT: That is on Mr. Ecterhoff's exhibit?

MR. HARVIN: If you will look at my copy you can see where I am referring to, Your Honor.

THE COURT: I have it now, sir.

MR. HARVIN: He says, "This exhibit sets out the volume of gas that has been transferred from the inter-state facilities into the intra-state facilities in the New Orleans district for the years 1965 through 1973 and as you will note the volume has been substantial. This transfer, or co-mingling will become even greater in future years when, considering the prior exhibits which show such a severe decline in intra-state reserves compared with increase in sales volume in this district." There is much more to his testimony and to the exhibits but I think that is the pertinent part that bears on the question of the utilization of inter-state gas supplies and the co-mingling of those inter-state gas supplies with intra-state or local gas in the New Orleans area. I might say that it is undisputed that the Nine-Mile station is located in the New Orleans area.

By MR. HARVIN:

Q. Mr. Cassin, with the filing of United's testimony of which Mr. Ecterhoff's testimony and exhibits were a part, what now is the schedule in the Commission's proceedings (CP71-89)?

A. The staff and intervenors have until June 7 to file their direct cases which is two weeks after our direct cases were

filed and cross examination on all testimony in the case is due to start that same day.

Q. The hearing will begin on June 7th?

A. Yes, sir.

Mr. Harvin: This week, in CP71-89, a motion of New Orleans Public Service, Inc., for a postponement of hearing and for an extension of time for serving intervenors cases. I offer that as the next exhibit. I would like to inquire, Your Honor, in that connection, if the Commission can advise whether that motion for postponement of the hearing in 71-89 has been acted upon yet, if the Commission's counsel can tell us.

Mr. Gooch: No, Your Honor, I cannot.

The Court: Thank you, sir.

Mr. Harvin: I believe that is all of the documents and presentation or live testimony that we think has to do with the issue that is before the Court. Mr. Barber has reminded me that—I believe that if can probably be stipulated by the parties, without the necessity of offering proof that the Sterlington Plant of Louisiana Power and Light is admittedly served by certificated inter-state lines of United.

I would like to inquire from counsel if that can be stipulated, Your Honor. If not; we will offer independent proof of it.

Mr. Carter: Your Honor, we can stipulate that we believe that the line is an inter-state pipeline and that there has been certificates issued for it. We do not know this of our own knowledge but we believe it to be so.

The Court: Thank you, sir, that will be sufficient.

Mr. Harvin: To remove any doubt about it and to move along quickly, Your Honor, referring to the deposition of Mr. N. T. Belvin, Jr. of United Gas Pipeline Company which was taken by Mr. Carter on May 24th, this week. Mr. Belvin was asked the question, "Can you tell me, Mr. Belvin, whether or not the sale, by you to Louisiana Power and Light, at the Sterlington plant, has been certificated by the Federal Power Commission?" to which, before Mr. Belvin could reply, Mr. Carter said, "We stipulate to that," Mr. McHenry of the Commission said, "stipulate to that," question, Mr. Carter, "sure."

The Court: Does that conclude your case, Mr. Harvin?

Mr. Harvin: Yes, Your Honor.

The Court: Will we next take up the Commission, do

you have any evidence or anything to produce, sir, Mr. Gooch?

MR. CARTER: Your Honor, before we get to that, may I add, if Mr. Harvin is completed with his case, if he is offering the documents that he has described?

THE COURT: I thought he had and that his case was complete.

MR. HARVIN: I thought and if I haven't I do.

THE COURT: All right, sir, and the case is completed.

MR. HARVIN: Yes, sir.

MR. CARTER: Well, at this point, Your Honor, we would like to object to all of the documents with respect to anything other than the limited purpose that the documents are actually documents that were filed in the proceedings indicated but for no other purpose.

Now, putting it another way, we should object to any of the documents—introduction of the documents for the purpose of their being the assertions of truth of the things that are said in the documents. If they are limited to that purpose, then we have no objection. When I say that purpose, the purpose of their being actual documents that were filed in the proceedings and nothing more, we would have no objection.

MR. HARVIN: We are offering them, Your Honor, in connection with this hearing, which as I understand it, is limited to the jurisdictional question before the Court because they represent an account of what has been taking place or is taking place at the Federal Power Commission now and show the position being taken there by the various parties to this lawsuit. I do not suggest, for one moment, that if this Court should, at a later date, decide to take jurisdiction of this case, if they have been offered in evidence where they would be admissible on the merits of the case or truth or falsity of the matters stated therein, but I do offer them for all purposes in connection with the jurisdiction which we say exists in the Federal Power Commission or at the very least, that the law gives them the right to determine the jurisdiction that it has and show that it is in the process of doing so.

THE COURT: The Court is going to sustain the objection to the extent that these documents be admitted into evidence but only to the extent that they are pertinent to the jurisdictional question before the Court.

MR. CARTER: Well, Your Honor, on that maybe we had

better point up something so that we can have a clarification of it.

THE COURT: All right, sir.

MR. CARTER: In one of these latter documents, there is testimony being offered by a gentleman by the name of Mr. Ectorhoff. His testimony, and by the way these last three pieces of testimony that have been offered here, Mr. Ectorhoff, Mr. Kirkland and Mr. Sanders, we have only seen that testimony in the past twenty to twenty-five minutes. If it has been filed, it has not been served on us heretofore. Consequently, we are in no position to be able to gauge what that testimony shows: It is quite bulky and on top of that, Your Honor, from just what Mr. Harvin has read here, there are statements being made by Mr. Ectorhoff in that testimony with respect to what kind of gas is flowing in the New Orleans district and how the flow is made and so forth. This, therefore, is testimony which could be said to relate to the jurisdiction—jurisdictional question involved here and we believe that that offer, therefore, is objectionable at this time for the purpose.

MR. HARVIN: The testimony is, Your Honor, for the purposes that are now before the Court, a motion to dismiss the sworn testimony—it is no different than any affidavit that the Court would consider on a motion to dismiss or on a motion for summary judgment and to remove any doubt about this matter at all, we have brought Mr. Ectorhoff here. If they want to ask him any questions about it, that are relevant to the matters here at issue, he is here and available. As far as Mr. Carter, whether he has had it or not, it has been served properly to the Commission and among the parties of the people that have been designated for services of the matter.

MR. CARTER: Your Honor, regardless of how it has been served, we have not seen it before twenty to twenty-five minutes ago when a copy was passed to us at the table here. If it has been served, therefore, it is still in the mail. As to the truth of the matters asserted therein, this has nothing but their words on cold paper, Your Honor, and there is no way we can cross examine that and to simply give us a pile of paper here at the eleven and a half hour and say Mr. Ectorhoff is in the back of the Courtroom and you can cross examine him if you have any doubt about it, is, I submit, is not a very good way of searching out the truth. We object to any assertion in these offers that

would go beyond the mere fact that they are documents that have been filed in the various proceedings. Anything that would go to the truth of any assertions therein, we object to and in the first place there are many, many self-serving declarations in there, Your Honor. All of these filings contain one after another, many of which Mr. Harvin has read to the Court.

MR. HARVIN: I never have quite understood the objection about self-serving declarations, even since I was in law school, particularly since I became a trial lawyer. It seems that all evidence seems to be cast in those terms and we think there is absolutely no difference between that portion of the record that is before the Commission and all of the other portions that are before the Commission.

THE COURT: The Court is going to take the position that this is certainly no more than the nature of an affidavit and look at it in that manner. The objection is overruled. If that is all, we will have a ten minute recess before continuing.

(Recess)

(Thereupon, the above mentioned exhibits were received into evidence and filed with the clerk of court.

MR. HARVIN: Your Honor, I misspoke on a matter immediately before the recess that I want to correct for the Court before we go on any further. I was under the impression, where we were discussing Mr. Ectorhoff's testimony, that it has already been sworn to at the time of filing. It has been filed and it has been served upon the parties. The procedure, I am told, at the Federal Power Commission, however, is for the witness to swear to it when he then gets there and he has not done so yet. He is present here in the courtroom and I would ask if he might be allowed to stand and have the clerk swear him on it.

THE COURT: Mr. Ectorhoff.

MR. CARTER: Your Honor, again I hate to be an obstructionist but this irregular, I think and I submit to the Court that when we had a little pre-trial conference here, about ten minutes before we started, Mr. Harvin assured the Court that he was going to introduce a number of documents for a limited purpose of showing that these documents had been filed in the proceedings in Washington, but now

here we are having an unusual procedure followed by having a bunch of statements put in the record by way of just exhibits and then we are going to have a gentleman stand up and be sworn and then his testimony gets certified that way. I think it is objectionable, Your Honor, except for the limited purpose that was outlined originally.

THE COURT: Well, the Court's only comment on that is the character of the green line was, I think, one of the points that was brought up by LP&L and the testimony being referred to is certainly pertinent to that point and that is the reason why the objection is overruled.

MR. CARTER: Well, Your Honor, it seems to me that if he is going to swear this witness in and have his testimony, then we ought to go ahead and put him on the witness stand and have him testify and have him subjected to the cross examination of normal events—in the normal events. Here we are going to have just a bunch of canned testimony like this was just another administrative proceeding and as far as I know it could contain leading questions and questions that would be improper. We have no way of protecting ourselves.

THE COURT: I think it would be proper to put him on the stand, then. You might put Mr. Ectorhoff on the stand and subject him to cross examination. You can ask him the questions which were read from the testimony and subject him to the cross examination on them.

MR. HARVIN: I would offer to put him on the stand at this time——

THE COURT: Yes, sir, if you would please.

MR. CARTER: Your Honor, just a moment, just a point of order. Would you like this to be done now or shall we cross examine Mr. Cassin first?

THE COURT: Well, Mr. Cassin has been on the stand and I didn't know you intended to cross examine him. I thought he was excused. Would you take the stand again, Mr. Cassin.

CROSS EXAMINATION

BY MR. CARTER:

Q. Mr. Cassin, in your job as vice-president and general counsel of United Gas Pipeline Company, have you been in charge of the proceedings on behalf of United in Washington

that I will refer to as the curtailment proceeding and the certificate proceeding?

A. Yes, sir.

Q. All right, and would you tell us what you understand a jurisdictional company to be? I use that term as a quotation from order #431, which is your Pennzoil-United exhibit #13.

A. That refers to jurisdictional pipeline companies.

Q. I see, and that would be somebody like United Gas Pipeline Company?

A. Yes, sir, a company which transports and sells gas for resale in inter-state commerce.

Q. Yes, sir. And what would be a non-jurisdictional company?

A. A company that doesn't fit that description.

Q. I see, and it would be a company, therefore, that was doing something that was not within the jurisdiction of the Federal Power Commission, is that right?

A. Yes, sir.

Q. And that would be a company that is producing and shipping and delivering gas in intra-state commerce, is that correct?

A. So long as a company does not transport or sell gas for resale in inter-state commerce, it is not a jurisdictional company. It may do both, it may transport gas and sell it for resale in inter-state commerce and parts of it's system, and it may to the contrary do it in not inter-state commerce in other parts of the system.

Q. Yes, so you may have a company that is jurisdictional in some part of this operation and non-jurisdictional in others, isn't that correct?

A. That is correct.

Q. And as a matter of fact, United Gas has been such a company up to this point, anyhow, hasn't it?

A. At what point in time United ceased to—certain activities of United ceased to be non-jurisdictional, I don't know, it was considerably before this time as reflected in the testimony of Mr. Ectorloff about 1965.

Q. Well, Mr. Cassin, as a matter of fact, as to all of those facilities that are in 71-89 proceeding, they haven't become jurisdictional yet, have they?

A. Yes, sir, they have. They are jurisdictional. There are no certificates outstanding with respect to them but so long as gas is transported through those facilities and

sold for resale in inter-state commerce, they are jurisdictional facilities.

Q. Mr. Cassin the FPC has not issued an order in the 71-89 proceeding saying we have jurisdiction over all of these facilities or any part of these facilities, has it?

A. That is correct.

Q. And until such time as it does, it is not under the jurisdiction of the Federal Power Commission, is it?

A. That is incorrect. That is wrong.

Q. Mr. Cassin, are you familiar with the filing that your company has made on May 14, 1971, in response to order #431?

A. Yes, sir, I am.

Q. That is your Pennzoil United exhibit #14?

A. Yes, sir.

Q. Now, in that exhibit, you have stated that the filing that is being made by May 14, 1971 document and I am now going to quote: "Will be made by appropriate filing at an early date in docket #RP71-29." That is the last sentence on the second page. Would you care to look at it? Have you made that filing yet?

A. The last sentence on the second page?

Q. The last sentence of the first paragraph of the second page.

A. No, sir, we have not made that filing yet.

Q. Are you preparing to make it?

A. Yes, sir.

Q. Now, when you make that filing Mr. Cassin, you are going to be requesting that your tariff, as you have revised it as an appendix to that document, be approved by the Federal Power Commission, is that correct?

A. You assumed in your question, Mr. Carter, that we are going to file an amendment to our tariff, but that is not what we say in that last sentence. We are not going to amend our tariff.

Q. Well, Mr. Cassin, you have something that is attached to your document of May 14, 1971 that appears to be entitled "General Terms and Conditions" and up at the top it is called "S.E.C. Gas Tariff", now is that part of your tariff or not?

A. That is and that is not referred to in the last sentence of the paragraph that runs over on page two.

Q. But that is not what I am asking you right now. I

am asking you if you intend to file this revised tariff that is appended to your document in the curtailment proceeding?

A. No, sir, it was filed with the Commission on May 17th with this letter.

Q. All right. Do you intend for this revised tariff to be part of your curtailment program?

A. We intend for this revised tariff to be part of our tariff.

Q. And also to be considered in your curtailment proceeding?

A. We intend for this revised tariff to be considered a part of our tariff, now what the Federal Power Commission may do with this, I don't know. We have no power over whether they will make this a part of our curtailment proceeding or not.

Q. Look, Mr. Cassin, time is so short——

MR. GOOCH: I object to this line of questioning Your Honor. It is within the discretion of the Federal Power Commission whether to treat this filing as a new filing or whether to enroll it into the present curtailment program, whether it is suspended, effective for the whole suspension period which would be beyond the summer contention policy or whether to let it go into effect or prevent it from going into effect, all of these will come before the Federal Power Commission and I don't believe Mr. Cassin is qualified to answer what will happen to this tariff filing.

THE COURT: I don't really think that Mr. Carter is trying to find out all of that. I think I will allow the question. It is within the scope of cross examination. Go ahead, sir.

BY MR. CARTER:

Q. Mr. Cassin, take your copy of the document in hand, please. Look at the first page of that revised tariff that is appended to your exhibit #14. Turn your attention to the paragraph #12, and will you please advise that you understand that paragraph covers what is known as impairment of deliveries?

A. Yes, sir, that is correct.

Q. And is impairment of deliveries a subject that is part of your proceedings in the curtailment matter?

A. Yes, sir, it is.

Q. So this revised tariff proposal that proposes to amend your order of curtailment, does it not?

A. Effective November 1, 1971.

Q. Now, the fifth in these revised tariff refers to those who are obtaining gas by direct sales, does it not, Mr.

A. Yes, sir.

Q. And do I understand that paragraph to indicate that United contemplates increasing the price of gas to those direct sales customers whose rate right now is less than the one hundred per cent load factor applicable for City gate customers at the applicable rate zone?

A. No, sir, that is incorrect.

Q. Is it correct, then, that you contemplate having, either those direct sales customers give you an increase for the price of your gas, or be curtailed in this category?

A. That is correct.

Q. So they have an alternative. They can either pay you more or be the first people to be curtailed?

A. Yes, sir.

Q. Now, there is also a contemplation of an increase in your rates in this revised tariff by way of a change in your demand charge adjustment and substitute fuel payment obligations, isn't there?

A. Yes, sir.

Q. That is in paragraph #12.3 of this revised tariff?

A. That is correct, except to the extent that the elimination of the demand charge adjustment has already been provided for in an earlier filing made March 30, in which the Commission has suspended for one day, to become effective June 2.

Q. All right. To the extent that that hasn't been done, this would do it——

A. Well, the other filing will take it from effective June 2 so this filing will have no effect on that elimination of the demand charge adjustment because it wouldn't be effective according to our proposal until November 1, in any event.

Q. It will have effect on your substitute fuel clause, does it not?

A. Yes, sir. If the Commission finds that this provision is just and reasonable and in the public interest and allows to become effective, it will have an effect on the substitute fuel clauses.

Q. And the effect of it will be to raise the cost to those direct customers of United who have to use substitute fuel?

A. Not necessarily.

Q. If the fuel they can get is less than gas, is that why you say not necessarily?

A. If United is obligated to pay these customers under it's contract with them, any amounts, or would otherwise be obligated to pay them any amounts, and is excused from paying those amounts by virtue of this clause, then to that extent it could be said it will raise the price to those customers.

Q. And you do have such contracts with direct sales customers whereby you have to adjust for substitute fuel usage?

A. Yes, sir, and we take the position, as of right now, that we have no obligations to those people except for the first seven day of November 1978.

Q. Well, really you are taking the position that, with respect to all of this business of yours, you have no obligations to your customers, don't you?

A. That is not correct.

Q. Well now, don't you have customers who have contracts—I beg your pardon, not customers, producers who sell gas to you who have contracts with you containing restrictive provisions in them whereby you are not to take their gas and put it into an inter-state line or co-mingle it with inter-state gas?

A. The first portion of your statement is correct. We are obligated not to move the gas out of state. The second portion of your statement is incorrect. We are not under any obligation not to co-mingle gas with inter-state gas.

Q. Mr. Cassin, aren't you in an obligation, in those contracts we are referring to with some of your producers to do whatever is necessary with that gas to keep it from being jurisdictional gas?

A. No, sir, we have had producers propose clauses exactly like that and we refuse to enter into them.

Q. Don't you have a contract with Pennzoil Producing Company—containing such a restrictive provision?

A. Not to my knowledge.

Q. You don't have any contract with Pennzoil that requires you to put their gas only into intra-state facilities?

A. That may be so.

Q. Well, is it so.

A. I am sure that that is so.

Q. And you are putting that gas into that so-called green

line that has been testified about in the proceeding in Washington by Mr. Belvin, are you not?

A. Yes, sir.

Q. Now the Florida parishes——

A. May I clarify that? Once again, to state that we are obligated—that we are to put this gas into intra-state facilities means we are obligated not to move it out of the state of Louisiana. Now that is our obligation to all of these producers and we are complying with that obligation.

Q. All right, and this is gas that is produced in Louisiana, is that not correct?

A. That is correct.

Q. And when it goes into that green line, in all of the facilities that are on the green line that are in Louisiana, are they not?

A. That is correct.

Q. And people like Louisiana Power and Light Company and New Orleans Public Service and all of those customers in that New Orleans district are all located in Louisiana, are they not?

A. That is correct.

Q. And as far as you know, they all consume that gas in Louisiana, do they not?

A. Yes, sir.

Q. All right, now, are you familiar with the Florida's parishes case?

A. Yes, sir.

Q. That case was only in 1965 or 1966, was it not?

A. Certiorari was denied in 1966.

Q. Yes, sir. Can you point to any sentence in that decision that requires you to make a filing such as you have made in 71-89?

A. No, sir. I—to the extent that the Supreme Court didn't say "United will make a filing", obviously the principals announced therein settled some issues that made clearly jurisdictional some facilities and services that hadn't been thought to be jurisdictional.

Q. Mr. Cassin, you testified about being at a conference in Washington in the 89 proceeding, sometime in May, I believe it was, did you not?

A. That is correct.

Q. And at that conference United suggested some calculations and figures with respect to what they called "non-compensatory sales" did it not?

A. Yes, sir.

Q. And I am showing you an exhibit which has already been identified in the discovery stages of this proceeding as LP&L Belyin #5 and I ask you to look at that exhibit, look at the figures and confirm to me that those are the figures that you submitted to that settlement conference.

A. I cannot do so because this is not the same sheet that we used.

Q. Do you have the same sheet available to you in this courtroom?

A. No, sir, I do not.

Q. You mean with all of the exhibits that you have brought here, you have a table full of exhibits and you don't have those figures?

A. That is correct.

Q. Well, let me ask you this. Did you say to me that this is not a correct figure that shows that you are claiming a deficiency, I think you call it, an average deficiency of 6.67 cents per MCF on those sales that are listed up above, namely Boise Southern City Service, Gulf States at Willow Glen, LP&L at Nine Mile point, N.O.P.S.I., and Shell Oil.

A. I haven't seen the sheet before, Mr. Carter and so I just can't say that the figures set out here are accurate, that the words on here are accurate. I just can't say that that is so.

Q. Mr. Cassin, you are in charge of United's handling of this proceeding, did you handle that conference with United?

A. Yes sir, I did.

Q. Did you suggest some calculation in that conference that were proposed as a settlement on the basis of United's getting more money for its gas from those customers that are listed in this exhibit?

A. No, sir.

Q. Well, what was the purpose of suggesting the figures then, Mr. Cassin?

A. The purpose of suggesting the figures was to show that with respect to six customers, including LP&L, United's cost of gas purchased in the field exceeded the revenues derived from the sale of that gas to these customers without taking into consideration United's expenses in transporting that gas and that the difference in cost is great now, it will get greater in the future, cost many millions of dollars. It threatens to impair the financial liability of United Gas Pipeline Company and threatens

to make it so that United cannot serve any of it's customers, including LP&L.

Q. Mr. Cassin, wasn't the purpose of those figures plainly to get those companies to agree on an increase in the rate of gas—the price of the gas—furnished to them?

A. The purpose of those figures was to demonstrate to all persons present at that conference what the difference in gas cost and revenues on United's system was.

Q. All right, and did you arrange, or do you know of any arrangement made by United to meet with personnel from N.O.P.S.I? I will pick them out as an example, specifically, to meet in order to discuss these very figures in terms of whether N.O.P.S.I. would be willing to undergo that increase.

A. Yes, sir.

Q. And that has happened, has it not?

A. Yes, sir.

Q. And United's position with N.O.P.S.I., in those discussions was that it wanted N.O.P.S.I. to agree to increase of the cost of gas to about approximately 6.7 cents per MCF?

A. United did advise N.O.P.S.I. at that conference and had previously advised them long before that United anticipated that the certificate CP #71-89 might not be issued at all with respect to sales to N.O.P.S.I. for the industrial use in its generating plant unless that sale was at a "compensatory" price and in fact the staff of the Federal Power Commission, at the conference that you are talking about, took that position and said that they were going to oppose the issuance of any such certificate in non-compensatory price. With that background and in that setting, we met with N.O.P.S.I. to discuss with them the possibility of amending their contract to provide for compensatory price in order to insure that the certificate issued and the service continued.

Q. All right. Did your company—who in your company prepared those figures, Mr. Cassin?

A. I don't know.

Mr. Carter: Your Honor, except for a reservation of my statement of position when I said LP&L's statement of position that was filed yesterday with the Commission, we didn't bring it with us, it didn't seem to us that it would be germane here but in view of all of these filings, that we have seen today, we wish to reserve a place for that state-

ment of position as exhibited here, so that you will have all of the documents.

THE COURT: That is the statement of position made by LP&L?

MR. CARTER: Yes, Your Honor.

THE COURT: Yes, sir.

MR. CARTER: —in the 29 proceeding.

THE COURT: Would you like to cross examine, sir?

MR. GOOCH: Yes, Your Honor.

MR. CARTER: Your Honor, I would object to any cross examination by the Federal Power Commission. They are aligned here, legally, with United Gas Pipeline Company and indeed their whole motion to dismiss is a deed, double carbon copy, you might say, identical language.

MR. GOOCH: Your Honor, I don't mind whether my questions are regarded as direct or cross, it doesn't make me any difference.

THE COURT: Objection overruled, proceed, Mr. Gooch.

DIRECT EXAMINATION

By MR. GOOCH:

Q. Mr. Cassin, please refer to what I understand has been identified as exhibit #14, which I understand is what United Gas Pipeline Company has filed in response to the Federal Power Commission's policy statement issue order #431.

A. Yes, sir.

Q. Now, attached to that document are some tariff sheets?

A. Yes, sir.

Q. Those are the tariff sheets that Mr. Carter was asking you questions about, is that correct?

A. Yes, sir.

Q. Mr. Cassin, has the Federal Power Commission permitted United Gas Pipeline Company to implement those tariff provisions?

A. No, sir.

Q. Now, Mr. Cassin, I did not object in any way to the questions and answers that you gave to Mr. Carter in connection with your views, as to what constitutes and to what might not constitute, so let me ask you only a couple of questions. Does United Gas Pipeline sell gas in interstate commerce?

A. Yes sir.

Q. Does United Gas Pipeline sell gas to other inter-state pipelines? Would you name some of them?

A. Texas Eastern, Southern Natural, Texas Gas, Mississippi River Fuel.

Q. That is enough, I just wanted them for the purpose of examples, now, let's talk a minute, Mr. Cassin, about the area up around Shreveport, Louisiana. Is there any question that those facilities by which gas is delivered to such customers as Louisiana Power and Light subject to the jurisdiction of the Federal Power Commission?

A. No sir, they are subject to the jurisdictional Federal Power Commission in north Louisiana and they have been certificated also. All facilities in the pink area on the map attached to Mr. Ectorhoff's testimony referred to earlier are jurisdictional.

Mr. Gooch: Now if the Court please, I would like to have marked a map which has so many reference numbers on it, I hardly know which one to use. Perhaps I should use the most recent marking which is LP&L Belvin #1. May I approach the witness, Your Honor?

The Court: Yes, sir. Would you like to identify that as Commission Exhibit #1, just to keep them in order?

Mr. Gooch: Yes, sir, and this will be, then, further identified as the Commission's first exhibit.

By Mr. Gooch:

Q. Mr. Cassin, in response to questions by Mr. Carter, we have been talking all along now, about a green system and a black system. Just for purposes of our discussions.

A. Yes, sir.

Q. All right, now, is this exhibit by which these color codes come from?

A. Yes, sir, it is.

Q. Now, Mr. Cassin, I want to direct your attention down to the off-shore area of southern Louisiana.

A. Yes, sir.

Q. But within either the disputed zone or clearly within the boundaries of the state of Louisiana.

A. Yes, sir.

Q. Does United Gas Pipeline Company have producer certificates authorizing producers to sell gas to an inter-state commerce through United Gas Pipeline from these areas?

A. United purchases gas from producers in those areas and the producers have certificates from the Federal Power Commission specifically in the Bastian Bay area and the Bay Marshand area and others.

Q. Does gas that is certificated for the inter-state market, by the Federal Power Commission on some of those areas, that you noticed, pass through this black system and on out of the state of Louisiana?

A. Yes, sir.

Q. Does some of this same gas purchased under the inter-state producer contracts, is that also delivered in the green system?

A. Yes, sir.

Q. And Mr. Cassin, is there any doubt in your mind that the Federal Power Commission has already issued certificates dealing with the black system as marked on this map?

A. Yes, sir, I mean there is no doubt in my mind that the Federal Power Commission indeed has issued such certificates.

Q. I apologize for the way I phrased the question and is there any question in your mind that there is pending, before the Commission right now, a proceeding which will determine the jurisdictional status of the green system?

A. There is no question in my mind that document CP71-89 is such a proceeding and it covers not only the facilities shown on the green but all of the sales and services off of those facilities including the sales to Louisiana Power and Light at the Nine Mile Point.

MR. GOOCH: I believe that is all, Your Honor.

RECROSS EXAMINATION

BY MR. CARTER:

Q. Mr. Cassin, how do you know that the gas—how do you know about the gas flows in this green system?

A. With respect to the two questions that I was asked on gas flows, that has been a matter that has been discussed time and time again over the course of the past year in our company and it is a matter of common knowledge among all of the officers in the company with respect to those two flows. Specifically I was asked about gas from—for instance, Bastian Bay and Bay Marshand that flowed out of the state of Louisiana and the answer was yes, that that

is just common knowledge in our company and also that gas from those fields reach the green system and the answer to that is also common knowledge, which is yes. It has in the past and will in the future.

Q. Well, Mr. Cassin, I think I understand you a little better now, but I want to ask you some questions on this so that the record will be clear. Are you referring now to the gas in those fields flowing somieplace, is that correct?

A. Gas in those fields flowing—being purchased by us under a contract, which is on file with the Federal Power Commission at these producers jurisdictional rates schedule, yes sir.

Q. But it is also true that gas from those fields is gathered and run through meters into the green system, is it not?

A. It goes through the black system before it reaches the green system.

Q. Mr. Cassin, if you don't know, tell me now, you are not telling me that the gas that Texaco sells you, for example, over in the Paradis field ever touches any part of any black line?

A. That is not gas, that is sold to us under a contract which is on file with the Federal Power Commission as Texaco's jurisdiction rate schedule and I didn't testify to that effect.

Q. Mr. Cassin, we are not asking you about that, now, we are asking you about the green line.

A. You were asking me, before, about gas purchased from the jurisdictional fields.

Q. Mr. Cassin, let's go back to the jurisdictional fields, as you like to call them. Isn't it a fact that you are—that United is getting gas from, let's take the Lirette field?

A. Yes, sir.

Q. And you are placing it directly through a meter into the green line?

A. No, sir.

Q. Well, would you kindly tell us how the Lirette Paradis line has any black gas in it?

A. Pardon me, I may have spoken too quickly.

Q. Yes.

A. We have gas coming out of the Lirette field that goes directly into the black line, yes, sir.

Q. Directly into the green line?

A. The green line, and we also have gas that goes directly into the black line.

Q. I tell you what I am going to do, I am going to ask some questions of some of your other people who will have more direct knowledge about this, but I do want to ask you this because you said something about it in the curtailment proceeding. Is it correct, as far as you understand it, that the green system is an integral system and that no gas flows out of the green system into the black system?

A. That is correct. It is not integral to the extent that it is not part of the common system of United in south Louisiana. It is not wholly separated integrally, it is part of United's common system in south Louisiana but to the other part of your question, "does gas flow from the green system to the black system" the answer is, no it doesn't.

Q. Right. Have you had a chance to read Mr. Belvin's deposition?

A. No, sir, not very extensively. I received a copy late last night. I dipped into it but that——

Q. That is all right if you haven't read it, I won't ask you about it.

MR. CARTER: That is all, Your Honor.

MR. HARVIN: I have one question, Your Honor.

RE-DIRECT EXAMINATION

BY MR. HARVIN:

Q. Mr. Cassin, when the application is made to the Federal Power Commission for a certificate of convenience and necessity, is one of the factors that the Federal Power Commission considers the compensatory nature of the arrangement in which the application is being made?

A. Yes, sir.

Q. And in factual, Commission, in cases such as South Georgia Natural Gas case in 1960, has refused to certificate direct industrial sales because they are not compensatory, has it not?

A. That is correct, yes, sir.

MR. HARVIN: That is all I have.

RE-CROSS EXAMINATION

BY MR. CARTER:

Q. And in those proceedings that you have just made a

filing on, which we got just about an hour ago here, the Kirkland and Sanders testimony, Mr. Cassin, are you familiar with that testimony?

A. Yes, sir, I am.

Q. And both of those gentlemen are either economists or work in the field of economics, don't they?

A. Mr. Sanders works in the economic field—the testimony speaks for itself as far as their background is concerned. Mr. Kirkland is primarily in the financial field.

Q. And their testimony has been the thrust of supporting an increase in compensation for United's natural gas being delivered?

A. Their testimony has a thrust of showing that if these direct sales are certificated and that the prices, without any change in the price, that United will very likely be unable to finance—not only expansion on its system but refinance its outstanding debt and finance the acquisition of gas that is necessary to be able to serve, not only its domestic or residential and jurisdictional pipeline Citygate customers but also these direct industrial customers including Louisiana Power and Light.

MR. CARTER: That is all, Your Honor.

MR. GOOCH: Your Honor, I have a couple of more questions, I am sorry.

FURTHER EXAMINATION

BY MR. GOOCH:

Q. Mr. Cassin, when the Florida parishes case, as we call them, these certificates—the Commission may decide that Mr. Carter and his clients are correct and issue a certificate at the present circumstances, isn't that correct?

A. Yes, sir, they may very well do that.

Q. And they may take the views of United Gas Pipeline Company and issue a certificate conditioned as United would have it, if they could have the best of all possible worlds.

A. We are not seeking a conditional certificate, Mr. Gooch, we are seeking an unconditional certificate. We feel, however that we are obligated to our customers, not only the ones affected by the Florida parishes compliance filing but to all of our customers and to all persons who receive our gas may be affected by our financial instability.

We just feel that we are obligated to point out these facts, now, and let everybody see what they are.

Q. Mr. Cassin, I didn't—I certainly didn't intend to get at your motives in any way. I just wanted to ask one of the options available to the Commission, in addition to accepting the views of Louisiana Power and Light and issue a certificate under the terms of, and conditions therein stated and the Commission might issue a certificate or not issue a certificate under terms that won't please the United Gas Pipeline Company, isn't that correct?

A. It might—it might issue a certificate with a condition as to price or as to volume, yes.

Q. Or, Mr. Cassin, the staff position as to whether it is an appropriate resolution of the certificated case may be accepted by the Commission, isn't that a possibility?

A. Yes, sir.

Q. And the other parties who participate in the certificate proceeding will also be heard, isn't that correct?

A. Yes, sir.

Q. So, until the Commission resolves the issue of the Florida parishes case the certificate cases, and determines under what terms and conditions the facilities will be certificated if at all, then there is no way to assist the impact of the Commission's decision, is there?

A. That is correct, there is no way.

MR. GOOCH: Thank you.

THE COURT: Any other questions of this witness?

You are excused, sir.

MR. HARVIN: Mr. Echterhoff, please.

J. H. ECHTERHOFF

called as a witness by United Gas Pipeline Company, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARVIN:

Q. State your name, please.

A. J. H. Echterhoff.

Q. And your position with United Gas Pipeline Company?

A. Vice-President in charge of transmission operations.

Q. Mr. Echterhoff, in connection with the filing that United Gas Pipeline Company made to the Federal Power

Commission, dated May 24, which has been offered here in evidence, I believe you have been present here in the courtroom when excerpts were read from part of your testimony attached to that filing, have you not?

A. I have.

Q. Are you familiar with the testimony, you have been over it?

A. Yes, I am.

Q. And is it true and correct?

A. To the best of my knowledge, it is.

MR. HARVIN: That is all.

MR. CARTER: Your Honor, I think, again, I must review my objection to this manner of procedure in the United States District Court of putting testimony in the record by that means.

THE COURT: Note the objection. Are there any questions of this witness?

MR. GOOCH: If Your Honor please, I would like to ask, as I understood Mr. Echterhoff's dealing with transmission, in regard to that I would like to ask him the same questions that I asked Mr. Cassin.

THE COURT: Proceed, sir.

DIRECT EXAMINATION

BY MR. GOOCH:

Q. Mr. Echterhoff, let me show you what has been marked FPC exhibit #1 which is—perhaps can be better identified by you as an item of United Gas Pipeline Company's filing of a certificate case before the Federal Power Commission. Have you seen this before?

A. Yes, sir.

Q. Do you feel competent to answer some questions?

A. Yes, sir.

Q. Now, Mr. Echterhoff, this map shows some pipelines marked in green. Now, those pipelines marked in green, as I understand it, are the facilities which are pending before the Federal Power Commission for determination of the jurisdiction, are they not?

A. Yes, sir.

Q. All right, let me ask you this, are there inter-connections between this black system and this green system and this green system?

A. Yes.

Q. Now, this black system has already been certificated by the Federal Power Commission?

A. Yes.

Q. And it is transporting and selling gas in inter-state commerce?

A. Yes, sir.

Q. And some of that gas comes from down here in the southern part of Louisiana?

A. Yes, it does.

Q. And some of the gas picked up by the black system is certificated by the Federal Power Commission?

A. Yes, it is.

Q. All right, and that gas that is certified at the well——

MR. CARTER: I object to the leading, Your Honor.

THE COURT: Sustained.

MR. GOOCH: I will be glad to rephrase it.

BY MR. GOOCH:

Q. State whether or not gas that is sold by independent producers and delivered to the black system is certificated by the Federal Power Commission.

A. It is certificated by the Federal Power Commission.

Q. For sale in inter-state commerce?

A. For sale in inter-state commerce.

Q. Tell me whether or not, gas from the inter-state black system is in turn pushed or pulled into the green system?

A. Some gas is being put in the green system.

Q. State whether or not, other gas continues out of the state.

A. Other gas continues out of the state.

Q. Now, Mr. Echterhoff, Let me ask you this, are there any certificates presently in existence: I will ask it like this: state whether or not United has any certificates, right now, that authorizes the facilities or deliveries of gas to Louisiana Power and Light Nine Mile Point.

A. I am not sure I got that question.

Q. Maybe it is the way I had it phrased: let me ask you this: do you have any certificates at all, dealing with deliveries from the green system to various customers?

A. Not to my knowledge.

Q. Now, these little orange points on here, that have letters of the alphabet, do those indicate inner connections between the green and black system?

A. Yes, sir, they do.

Q. Do you have certificates for any of those points of delivery?

A. Not to my knowledge.

Q. By certificates, you understood I meant——

A. Yes, sir.

Mr. Gooch: All right, sir. I think that is all.

Cross Examination

By Mr. Carter:

Q. Mr. Echterhoff, that green system on what is now known as Commission Exhibit 1, is in fact an integral system, is it not? That is, a system which can operate unto itself?

A. What do you mean, "Operate unto itself"?

Q. Well, let me just describe it another way and we will get it clear. Aren't the pressures in the black system different from the pressures in the green system?

A. Yes.

Q. And in order for gas to get from the black into the green system, you have to turn a valve, do you not, or some kind of meter?

A. You can separate the two with a valve, but there is a measuring device or regulating device to let the gas flow.

Q. What I am getting at, Mr. Echterhoff, as Mr. Belvin told us, under oath that there were valves and regulators, regulating devices such that the green system could be completely closed off from the black system. Now, is that correct?

A. That is correct.

Q. That is what I meant when I talked about being an integral system. Now, in order for somebody to put black gas in the green line, they would have to turn a valve or other regulating devices, do they not?

A. Yes.

Q. You have been serving the Louisiana Power and Light Company without a certificate since 1951, have you not, at the Nine Mile Point?

A. That is correct.

Q. Were you in the courtroom when I asked Mr. Cassin about the green gas not flowing into the black line?

A. Yes, I was.

Q. And he gave truthful testimony when he said that, did he not?

A. Yes, he did.

Q. And that is because there is a difference in the pressure, the green pressure is lower than the black pressure, is it not?

A. That is right.

MR. CARTER: That is all.

RE-DIRECT EXAMINATION

BY MR. HARVIN:

Q. There is no contention by United in the proceeding pending before the Federal Power Commission that gas which goes originally from the field into the green line, flows back into the black line out of the state, is there?

A. No.

Q. But what about the reverse, is gas flowing from the black line into the green line?

A. Yes, it is.

Q. Which means that——

MR. CARTER: Objection to the leading.

THE COURT: Sustained.

BY MR. HARVIN:

Q. Will you tell the Court whether or not, in this system, in the New Orleans division, gas at any time flows from the black interstate line and passes into the green line?

A. Yes, sir.

MR. CARTER: Object to the leading.

THE COURT: Sustained, I think the Court understands that though.

BY MR. HARVIN:

Q. Mr. Echterhoff, in respect to Mr. Carter's questions about the green system being an integral, otherwise it could be closed off entirely, do you recall that line of questioning?

A. Yes, I do.

Q. Have you made studies in attempts to determine what would happen to your supply of gas to the New Orleans area if that green system were, in fact, closed off?

A. Yes, sir, we have.

Q. And what did they indicate?

A. They indicated an insufficient supply to serve the customers connected to that system and we would have a very critical situation develop.

Q. Including the Nine Mile Station?

A. Including the Nine Mile Station.

Q. And is that why inter-state gas is flowing into that system?

A. Yes, sir, it is.

MR. HARVIN: That is all.

THE COURT: Any further questions of this witness? You are excused, sir. Thank you very much.

MR. HARVIN: We have nothing further now, Your Honor.

THE COURT: All right, sir, fine. Thank you, sir.

MR. GOOCH: May it please the Court. Mr. Harvin has put in substantially everything—except—I think I have nothing more than the volumes I took the liberty of bringing down here with us and I don't have copies for everybody, but they all have copies that are referred to in the proceedings, the entire excerpts from the proceedings in both the certificate cases and the curtailment cases. I don't propose at this time to read them, and I would hope that in the recess, the Court will permit me to mark them individually as exhibits and then, having done so, offer them enmasse, with certificates from our secretary, certified that these are documents, and I agree with Mr. Carter that the Federal Power Commission, or its staff, does not necessarily agree with all of the testimony that is presented here. That the Commission has not had an opportunity to pass on it at all and the staff, as you will see, is cross examining those numbers, so I offer to show the status and the scope and the extent of the proceedings before the Commission, rather than to establish the truth as to what is stated.

THE COURT: Accepted with those limitations, sir, and let them be filed.

MR. CARTER: On the basis of that limited offer, Your Honor, we would have no objection to it.

THE COURT: All right, sir, fine.

Thereupon the exhibits that were to be marked at recess, were received into evidence and filed with the Clerk of Court.

MR. GOOCH: I also brought, if the Court please, samples, also certificates from the secretary of various producers, certificates authorizing the sale of gas in inter-state commerce which I believe, if I am not mistaken, Mr. Belvin

will be able to tie into the black system. I also brought certified copies of the certificates on portions of the black line to establish that they are jurisdictional by the Federal Power Commission. So these would be offered to show that the producers of the black line jurisdiction, is jurisdictional under the black line.

THE COURT: Admitted.

Thereupon the exhibit hereinbefore described was received into evidence and filed with the Clerk of Court.

MR. GOOCH: I also brought three orders of the Commission which may be germane to the proceedings. I brought a certified copy of the Commission's order #431 which has previously been offered into evidence. I also brought a certified copy of the Commission's order and docket R-405 which has not been mentioned heretofore and I don't know if it becomes marerial or not, I won't go into it unless it does. It just happened that the secretary lumped these together and a copy of the Commission's order which did permit United's curtailment plan of the tariff provision which will go into effect—not the one that Mr. Carter——

THE COURT: The winter plan?

MR. GOOCH: The summer one.

THE COURT: Permitted the winter plan to go into effect, is that not right?

MR. GOOCH: No, sir. The previous—if, I may have lost track of the exhibits, the one permitting the winter plan did go into evidence. This is the order that permits the one filed in February. I believe that this would be a complete summary of the order entered to date by the Commission in the curtailment proceeding.

THE COURT: There being no objection, they are admitted and subject to identification by counsel.

MR. CARTER: We have no objection, we would simply have an observation for the Court's benefit that that last order that counsel was talking about has no relationship to Louisiana Power and Light.

MR. GOOCH: If the Court please, I am not sure that I can accept that observation but the orders speak for themselves.

THE COURT: It will be admitted subject to that limitation. Is that all, Mr. Gooch?

Thereupon the exhibits as herein before described were received into evidence and filed with the clerk of court.

MR. CARTER: Well, Judge, they have been presenting their very brief case for 3 hours and 6 minutes. I would like to get a drink of water, if I may, and then commence and I will assure you that we will be rather diligent and equally brief.

THE COURT: All right, sir, fine. We will have a ten minute recess.

(Recess)

THE COURT: Proceed, Mr. Carter.

MR. CARTER: Call Mr. J. M. Wyatt.

J. M. WYATT

called as a witness by Louisiana Power and Light Company, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. Give us your full name and address, please sir.

A. Jack M. Wyatt, 102 Berkeley Drive, New Orleans, Louisiana.

Q. By whom are you employed?

A. Louisiana Power and Light Company.

Q. What is your job?

A. Senior Vice-President.

Q. How long have you been with that company?

A. Thirty-three years.

Q. What were you before you were Senior Vice-President?

A. Vice-President.

Q. And what were you before that?

A. Division Manager.

Q. And before that?

A. Assistant Division Manager.

Q. All right, and then you went all the way down the line to a low beginner, is that right?

A. Correct.

Q. All right. Now, as Senior Vice-President, what part

of the company's business operations is under your jurisdiction?

A. I have responsibility for treasury and accounting, rates and research, offered services, rates—power, production of power.

Q. All right.

A. I believe that is about all.

Q. Now, for a moment, just some brief questions about the company, the Louisiana Power and Light Company. You have said that your complaint—what you have said in your complaint is that the Florida Corporation has its principal place of business in Louisiana, is that correct?

A. That is correct.

Q. And it is engaged in the generation and transmission and distribution and the sale of electric power and energy?

A. It is.

Q. And you operate in 46 of the 64 parishes of Louisiana?

A. We do.

Q. Now, do you have an electric generating plant known as the Sterlington Station in Ouachita Parish?

A. We do.

Q. And do you have another electric generating plant or station known as Nine Mile Point Station in Jefferson Parish, Louisiana?

A. We do.

Q. Jefferson Parish is down in south Louisiana, near the Gulf Coast?

A. Right, right next to New Orleans.

Q. All right, now how do those stations operate, Mr. Wyatt?

A. We use natural gas to fire our boilers from which steam is made and then steam is in turn run through turbines from which we generate electricity.

Q. All right. First of all, describe the Sterlington Station for us, how many units does it have?

A. We have four units operating at *Sterlington* for a combined capacity of 333 megawatts.

Q. All right, sir. And when were those generating units constructed?

A. Between 1928 and 1958.

Q. When those units were constructed, Mr. Wyatt, was any provision made for the use of any fuel other than natural gas?

A. There were no provisions made for using other than natural gas for fuel.

Q. All right. Do you have any provisions, right now, for any fuel other than natural gas?

A. We do not at Sterlington.

Q. All right. Now, describe the Nine Mile Point Station for us, how many units are there?

A. We have four units at Nine Mile, ranging in capacity from 74 megawatts to 750 megawatts and they were installed from 1951 through 1971.

Q. At 750 megawatts, it would be the same as 750 thousand kilowatts, correct?

A. Correct.

Q. All right. Now, when those units at Nine Mile were constructed, was any provision made for operating on any fuel other than natural gas?

A. Yes, we made provisions for operating the plant on an emergency basis using #2 oil that had the capacity to run the plant on full load for about 36 hours, a day and a half or thereabouts.

Q. So you have a capability at Nine Mile Point on an emergency basis to operate up to 36 hours on #2 fuel oil, is that right?

A. That is correct.

Q. Now, have you any contract with United for a supply of gas to the Sterlington Station?

A. We do.

Q. Mr. Wyatt, have I asked you to furnish me with those contracts?

A. You have.

Q. I am handing you now, a group of contracts and ask you to examine those and tell us if those are the contracts that LP&L has with United for gas to the Sterlington Station?

MR. CARTER: Your Honor, I am not going to mark those originals with the leave of the Court. I am going to substitute zeroxed copies, these are our original records.

THE COURT: All right, sir.

THE WITNESS: These are the contracts as between Louisiana Power and Light Company and United Gas Pipeline Company for the Sterlington Plant.

BY MR. CARTER:

Q. Mr. Wyatt, to hustle along with this, is your base

contract for the gas at Sterlington #1 dated February 20, 1956?

A. It is.

Q. I mark that contract as LP&L—Wyatt #1A and Mr. Wyatt, what is your next contract in the Sterlington pile?

A. Amendment agreement dated March 29, 1963.

Q. I am marking that contract as LP&L—Wyatt #1B, and what is your next contract in the Sterlington group?

A. It is an amendatory agreement between United Gas and LP&L dated November 30, 1966.

Q. I mark that contract as LP&L—Wyatt #1C. Do you have further contracts in the Sterlington group?

A. I have another contract amending the basic contract dated December 2, 1969.

Q. All right, I mark that contract LP&L—Wyatt #1D and do you have another contract, as a matter of fact, dated that same date with Sterlington?

A. I have two more contracts dated that same date, however, they are not in regard to the basic contract.

Q. All right, please identify those two contracts.

A. If I may, I have a stand-by gas sales agreement, basic agreement, dated May 5, 1967 which was amended on December 2, 1969.

Q. Have we—you haven't gotten to that stand-by sales agreement yet, I don't believe. I will mark that one as LP&L—Wyatt #1E. Now go ahead from there, what is your amendatory agreement you mentioned?

A. The amendatory agreement to the stand-by sales agreement, which is dated December 2, 1969.

Q. All right, and that is being marked LP&L—Wyatt #1F. Now, do you have any further agreements from Sterlington?

A. I have a transportation agreement between United Gas Pipeline Company and Louisiana Power and Light Company dated December 2nd, 1969.

Q. I am marking that exhibit LP&L—Wyatt #1G. Now, are those all of the contracts that you have with United for the Sterlington Plant?

A. They are.

Q. All right, sir. Do you also have a contract with United for your supply of gas at the Nine Mile Point power plant?

A. We do.

Q. Is that your contract at Nine Mile Point with United that I have just handed you?

A. This is our sales agreement between United Gas and Louisiana Power and Light Company for Nine Mile Point plant dated May 6, 1968.

Q. All right, I am marking that contract LP&L—Wyatt #2.

MR. CARTER: Your Honor, at this time I am going to offer these contracts into evidence, LP&L—Wyatt #1, A through G and LP&L—Wyatt #2. These are contracts, which I might say for the record, that are attached to the complaint in this matter and they are obviously agreements that United has available to them, the other contracting party.

THE COURT: Admitted, allowing also the condition that the originals may be withdrawn and substituting photostatic copies.

Thereupon the exhibits marked LP&L—Wyatt No. 1, A through G, and LP&L—Wyatt No. 2, were received into evidence and copies will be made and filed with the clerk of court.

BY MR. CARTER:

Q. Now, Mr. White, what is the purpose and use made by Louisiana Power and Light Company of the gas supplied by United at Sterlington?

A. We utilize the gas to fire our boilers from which steam is made and therefore generate electricity.

Q. All right, and is that the only use of that gas that is made by LP&L?

A. That is the only use of the gas at Sterlington, yes, sir.

Q. All right. What is the use made of that gas by LP&L at the Nine Mile Point?

A. The same use is made of it, to fire our boilers from which we make electricity.

Q. And is that the only use?

A. Only use, yes, sir.

Q. Now, Mr. Wyatt, would the curtailments proposed in the FPC proceedings that you have heard about this afternoon here, proposed by United reduce the amount of gas

to which LP&L is entitled under its Sterlington and the Nine Mile contract?

A. It would—they would.

Q. In the discovery proceedings in this matter, I have identified a document as LP&L—Belvin #5, which is a series of calculations with the heading "Non-compensatory Sales, Twelve Months, July 31, 1970," and I ask you if that document has come to your attention?

A. This document has come to my attention.

Q. Mr. Wyatt, do you know what that document purports to show?

A. It purports to show——

Mr. Harvin: May it please the Court, it doesn't seem to me that this document has been proved for application of his contentions——

Mr. Carter: That is——

Mr. Harvin: For that reason, due to the fact that this is just hearsay, as far as he is concerned——

Mr. Carter: Your Honor, I asked it precisely for the purpose—the purpose of my question is to have Mr. Wyatt to testify what he understands that document to be. I hear a proposal by United to alter the rates to certain customers that they considered non-compensatory, including LP&L.

Mr. Harvin: If that is the case, we also have to object to its being totally irrelevant to the jurisdictional issue here.

The Court: The objection is overruled; it will be allowed.

By Mr. Carter:

Q. Mr. Wyatt, if you don't remember the question, and that is very likely, I will ask it again. What do you understand that document to be and how did it come to your attention?

A. It came to my attention as a result of a conference that was held and as a result of the conference, this information was made available to our people, from which I got the copy that came across my desk.

Q. And this conference was the one that Mr. Cassin earlier testified about in Washington?

A. In Washington, yes.

Q. In Washington?

A. Yes, sir.

Q. And these figures were proposed by United, so far as you know?

A. They were. I was under the impression and told that they were proposed by United.

Q. And Mr. Wyatt, what affect would that proposal have on LP&L?

MR. HARVIN: I think the witness just indicated that he was told something about it and I renew my objection as being strictly heresay as far as he is concerned and it has not been proven. It was given to him, as I understand, in some form or fashion.

MR. CARTER: We are trying not to play games, Judge, and get along with things but I will——

BY MR. CARTER:

Q. Mr. Wyatt, do you know a Mr. Haslanger?

A. Yes.

Q. Who is he to your knowledge?

A. He is President of the United Gas Pipeline Company.

Q. And do you know, of your own knowledge, whether or or not Mr. Haslanger met with any personnel representing Louisiana Power & Light Company in connection with those figures?

A. Yes, I do. He met with our President and the President of the Middle South Services.

Q. All right, and do you know what was proposed by Mr. Haslanger with respect to those figures?

MR. HARVIN: Your Honor, if this gentleman didn't meet with Mr. Haslanger, I doubt if he can give testimony of what Mr. Haslanger may have said, that would be heresay.

THE COURT: I am going to overrule the objection.

THE WITNESS: I understand that the proposal made was that the companies represented on this sheet, and particularly Louisiana Power and Light, at N.O.P.S.I. were to accept this as a suggestion for increasing the cost per kilowatt hour to them from their present contract and in our particular case, even though the average, as shown on this sheet, is 6.67 cents per MCF, ours at Louisiana Power and Light Company is slightly higher. It is about 6.8, so we calculated, as increase over our present gas contract.

Q. All right, sir. Do you know that this was submitted within the frame-work of the CP71-89 proceeding, the one that is known as the certificate proceeding?

A. That is my understanding.

MR. CARTER: So that this will not be puzzling, or misleading, Your Honor, I would ask leave—for permission to renumber this exhibit as LP&L—Wyatt #3 and offer it into evidence at this time.

MR. HARVIN: To which we register our objection on the grounds that it has not been proved that this witness has any personal knowledge or is in the position to identify the exhibit. That his testimony is completely heresay from a person other than anyone at United—that no one at United ever spoke to him about it and likewise it is irrelevant to the jurisdictional issue.

THE COURT: Overruled, it is admitted.

Thereupon, the exhibit marked LP&L—Wyatt No. 3, was received into evidence and filed with the clerk of court.

BY MR. CARTER:

Q. Mr. Wyatt, I show you a document already in evidence that has been presented as Pennzoil United exhibit #14 on United Gas Pipeline Company, a letter dated May 14, 1971, consisting of seven pages signed by William B. Cassin with revised gas tariff attached to the back of it and ask you if you have ever seen that document before?

A. Yes, I have.

Q. Mr. Wyatt, are you aware that that document is a proposal by United in the FPC proceedings?

A. I am.

Q. And are you aware of what effect that document or that proposal would have on LP&L?

A. Well, it would have a very great effect on LP&L. In the first place, it would increase its rates that we are paying for gas under our contract with United. It changes the order of priority, unless the rates are increased, among several other things.

Q. All right. Of course, all of your answers assume that that would be so if it were made applicable?

A. If it were made applicable.

Q. And which we are trying here to see that it is not applicable, right?

A. Yes, sir.

MR. CARTER: We won't have to argue about this one, Your Honor, because it is theirs. I tender the witness.

CROSS EXAMINATION

BY MR. GOOCH:

Q. Sir, Mr. Wyatt, I have a couple of questions. Louisiana Power and Light—would you tell the Court whether or not that also is a jurisdictional company subject to the jurisdiction of the Federal Power Commission?

MR. CARTER: Objection, he is not qualified to answer that.

MR. GOOCH: I will establish it another way, then Your Honor.

THE COURT: All right, sir.

MR. CARTER: I would say this, Your Honor, that if Mr. Gooch would like to stipulate, Your Honor, that Louisiana Power and Light Company is in a limited manner with respect to some of its wholesale sales with retail sales subject to jurisdiction of the Federal Power Commission.

MR. GOOCH: I'm afraid that won't quite get it, Your Honor.

THE COURT: All right, sir.

BY MR. GOOCH:

Q. Mr. Wyatt, with regard to Pennzoil exhibit #14, the matter that Mr. Carter was just asking you about, you testified that this would have serious impact on Louisiana Power and Light if permitted to go into effect, isn't that correct?

A. Yes, sir.

Q. Has the Federal Power Commission permitted that to go into effect?

A. They have not.

Q. Are they giving you an opportunity to be heard on that before it can go into effect?

A. Yes.

Q. Now, Mr. Wyatt, after June, 1971, does your company expect to be able to off-set any foreseeable gas curtailment by burning oil?

A. Possibly, after June, slightly after—don't tie me

down to June but sometime this summer we expect to have facilities at our #6 unit at Sterlington to burn oil on an emergency basis.

Q. Have you reported to the public that after June of 1971, the company expects to be able to offset any foreseeable gas curtailment by burning oil?

A. We have not——

MR. CARTER: Now, Your Honor, that would be a terribly distorted report—the witness has just testified.

BY MR. GOOCH:

Q. All right, sir, I now have a certified copy of the registration statement filed by Louisiana Power and Light Company before the Security Exchange Commission which I would like to have Mr. Wyatt, now, to read to the Court. I show you first, Mr. Wyatt, the certificate of Mr. Charles A. Moore, Deputy Records Officer, United States of America Securities and Exchange Commission. I turn now to a document within that certification which says on its cover "Louisiana Power and Light Company" with a time stamp received April 7, 1971. I ask you now to read from page six of that document under fuel supply.

A. "The company's primary fuel supply is natural gas. Two companies—three major generating stations—are outfitted to burn on oil as a stand-by fuel and the third station is presently being modified to allow the burning of oil as a stand-by fuel and this modification is scheduled for completion by June, 1971. The company has firm contracts for adequate supply of gas for all generating capacities, which will be operational prior to 1974, three thousand four hundred and four megawatts, which contracts have various expiration dates from 1978 to 1993. During the winter of 1970-71, gas was curtailed to some extent by one supplier who supplied gas to approximately five hundred and fifty megawatts of generating capacity. After June 1971, the company expects to be able to off-set any foreseeable gas curtailment by burning oil."

Q. All right, sir. Is that the end of that?

A. No, not quite, one more sentence.

Q. All right.

A. "The supply of fuel for the generating units that will become operational in 1974 and thereafter is being negotiated at this time."

Q. Now, All right. Have you read to the Court the representation made by Louisiana Power and Light in a registration statement filed with the Security Exchange Commission with regard to fuel supply?

A. I have.

Q. All right, sir, now, Mr. Wyatt, do you recall when it was that United Gas Pipeline Company filed its curtailment plan for the summer of 1971?

A. I don't recall exact dates, I believe it was February 22 or somewhere about there.

Q. All right, sir, within the month of February?

A. Yes, sir.

Q. Mr. Wyatt, do you recall when this lawsuit was filed against United Gas Pipeline Company?

A. I don't believe I do.

Q. Mr. Wyatt, I have here what I believe is an accurate copy of the complaint filed in this suit. It appears to be signed by Andrew P. Carter and it indicates a verification, at least, of the 29th day of March, 1971.

A. This document does.

Q. The Court has very kindly handed me the original, would you look at the filing date on that?

A. March 31, 1971.

Q. All right, now have you read this complaint?

A. Yes, I have.

Q. Could you read that portion of the complaint which talked about the possibility of this curtailment program causing black-outs and brown-outs?

A. I am sure I did because I read the whole complaint. Yes, I see it here.

Q. Look at paragraph seven.

A. I see it.

Q. Now, Mr. Wyatt, wouldn't you say that a plan which would cause black-outs and brown-outs on Louisiana Power and Light system is a material fact?

A. Yes.

Q. And very significant?

A. Yes.

Q. Mr. Wyatt, let me ask you again to look at the registration stamp filed with the Securities and Exchange Commission. If you will follow me through, you will see that the

first filing, according to the time stamp, was on February 19, 1971.

A. Yes.

Q. Which was prior to the time that United Gas Pipeline Company filed their summer curtailment program, isn't that correct?

A. Yes.

Q. Now, let's look at what you say on fuel supply. Would you read that over and tell me whether it differs in any respect at all, if you remember it, with what you read to the Court in the last filing?

A. It appears to be the same.

Q. All right, sir. Now we know that the suit was filed at the end of March, right?

A. Yes, sir.

Q. In which it was alleged, the significant and material fact that there may be black-outs and brown-outs, isn't that right?

A. Yes, sir.

Q. And then we looked at the prospectus by which Louisiana Power and Light Company offers securities to the public, a verified filing with the Securities and Exchange Commission in April.

A. Yes, sir.

Q. April 7th, now that would be after the time that this suit was filed?

A. Yes.

Q. But the fact that the significant and material possibility of black-outs and brown-outs was not called to the public's attention, was it?

MR. CARTER: I think, Your Honor, that this is a waste of time and I object to the waste of time and the Court's— it is pretty obvious here that Louisiana Power and Light Company is not going to assume any registration statement that it is going to lose this suit. We are expecting to get the gas we are entitled to under the contract. We are certainly not going to suggest to the SEC or anybody else that we are not going to get it.

THE COURT: Overruled.

BY MR. GOOCH:

Q. All right, sir. Now let's look under such things as litigation and regulations in the registration statement

filed by the SEC. Mr. Carter has just said that they were not going to assume they would lose any suits. Would you show me anywhere in this registration statement filed in April, where Mr. Carter even disclosed to the public that there was a suit pending which could cause Louisiana Power and Light company to suffer brown-outs and black-outs if this allegation were true?

A. If I understand your question, I don't see why it would be necessary to notify, because there was nothing involved here that would cause brown-outs or black-outs on this suit.

Q. Nothing involved in the suit?

A. In the suit that I am looking at here, if I understand your question.

Q. My question is; is the suit that we are here in Court for today, do you see that disclosed anywhere, to the public, that it is pending?

A. No, it is not in here.

Q. All right. Now, would you please look at the date of this certificate?

A. Yes.

Q. Will you tell the Court what that is?

A. May 19, 1971.

Q. Are you aware of the filing with the SEC that would either call to the attention the pendency of this suit to those who may be interested in purchasing Louisiana Power and Light securities or reporting any change in your fuel oil situation subsequent to May 19, 1971?

A. I am not aware of it.

MR. GOOCH: I would like to have this marked as a Federal Power Commission exhibit. I believe that is all the questions that I have at this time, Your Honor. I would like to offer this certified copy, SEC.

MR. CARTER: To which offer we object, Your Honor.

THE COURT: The objection is overruled. The document is admitted.

{ Thereupon the exhibit herein before described was admitted into evidence and filed with the clerk of court.

MR. HARVIN: I have a question, Your Honor.

CROSS EXAMINATION

BY MR. HARVIN:

Q. Maybe I didn't hear you fully. I have some trouble

about that sometimes, but it did strike me that you gave the Court a very complete picture about the gas supply situation at the Nine Mile Power station, didn't you?

A. I thought I did, maybe I don't understand your question.

Q. Oh, you identified a contract that you had with United Gas Pipeline Company for some gas at the Nine Mile Power station but I believe you have other substantial gas contracts to supply the Nine Mile Power station, don't you?

A. We have another contract with another supplier, yes.

Q. That is a contract with Texaco?

A. Correct.

Q. A so-called non-jurisdictional contract?

A. Yes.

Q. Not subject to the regulations of the Federal Power Commission?

A. Correct.

Q. And how many such contracts do you have with Texaco?

A. We have two, one which is in effect at the present time.

Q. And in the interest of completing the picture as to the gas supply for the Nine Mile Station, did you bring those contracts with you, Mr. Wyatt?

A. I did not bring the official documents, no, I did not.

Q. Do you have copies of them, whether they are official documents or not? If so, would you produce them for us?

MR. CARTER: I would object to producing them, Your Honor. First of all, there is only one contract that LP&L has in effect with Texaco, and as to that contract, I would object to our producing it, principally for the reason that it is not relevant here, but apart from that, and more important, is that the contract has a stipulation from Texaco as to its confidentiality and the Texaco people are here and they have an attorney in the back of the room, because the Federal Power Commission's general counsel requested that they be here and I would think, therefore, that they can speak for themselves on this subject and more clearly and elaborately than I can, but we object as far as Louisiana Power and Light Company is concerned, the disclosing of the contract with Texaco, because it is irrelevant here.

MR. HARVIN: They claim they are in here and have jurisdiction in this Court, as the basis for getting emergency

relief, because as the impact of the curtailment program, Your Honor. I think this all goes to that. We are operating under restraint right now and we have never really had an opportunity to have a hearing on the premise that these people would be in serious difficulty without our gas. It has just been disclosed that they have other alternates for fuel as well as the one I have been inquiring about now.

THE COURT: Was LP&L requested to bring this, was there any attempt of discovery or——

MR. HARVIN: We made no formal request, Your Honor, but if the witness has it here, we would like to make a request now that he produce it.

MR. CARTER: Your Honor, they made not only no formal request, they made no informal request and this is the first we have heard of this from United.

MR. HARVIN: I have not——

MR. GOOCH: Excuse me, Mr. Harvin, I did request Texaco to have the contracts within the range of the Court's power, in the event that it became material and the Texaco people did appear with it, as I understand it. I do not believe that Mr. Carter—my understanding of the situation is not the same as his. I understand that Texaco had told him of that request, is that not true?

MR. CARTER: Texaco's attorney advised me yesterday that the Federal Power Commission was after them to produce their contract and I said to them, "If you have to produce your contract or feel that you do have to break the confidentiallity of it, then we wish for you to bring your contract with you, between you and United, that shows the restrictive nature of your contract whereby the gas is not to be placed in inter-state commerce." Upon our saying that to them, we had no further communications with them, with Texaco's attorney.

THE COURT: Well, I would like to hear from Texaco's attorneys.

MR. PURLEY: Your Honor, my name is Daniel Purley, and I am an attorney representing Texaco from New Orleans, Louisiana. I represent the southeast region which includes the states of Louisiana, Florida and other states. This point was brought to my attention very late Tuesday evening and yesterday, which was Wednesday. Now, our position is very simply this and we weren't apprised of it and I so advised our manager. There is no question about what Mr. Carter has said concerning our position, with re-

spect to any of our industrial gas sales contracts. We consider them to be highly confidential and of a proprietary nature. The gas sale that is in question here involves a solely owned Texaco pipeline system. There is no contamination of that gas that is delivered in that system to LP&L with black gas, green gas, purple gas, or whatever color of the rainbow you might have here. The point that I am making is, that this contract is based upon economic analysis and our expertise in the industrial market, and as a result of that, we consider that if this contract is divulged to any party outside of the contracting parties would jeopardize our competitive position in the industrial market. For that reason, we take the position that our contract is totally irrelevant and immaterial to this hearing, secondly, that if the Court should determine that there may be some—that this contract may have some bearing on this proceeding, then we would move that the Court consider what portions of that contract is relevant and material and to issue a protective order, and would be binding upon United's attorneys, the Federal Power attorneys and other attorneys of proceeding, whereby they would not advise their—the individuals that they represent, and the agencies that they represent, of the contents of that contract, and this court so direct that if that part of the contract becomes a part of the record, that it not be made available for public scrutiny, and what happened in connection with the request of the Federal Power Commission, they were simply told this; that if they would tell us possibly what provisions of the contract that they wanted, there are some that we could possibly stipulate to, that would not get into this area. For example, there are definitions in the contract, the delivery point, the quantities of gas that are sold under that contract, are subject to reports that we file with the Department of Conservation in the state of Louisiana, but beyond that, this contract is a highly confidential and proprietary document and we do not want to see this contract released to anybody and not necessarily be a part of this proceeding. This, we don't think, is material. Now, even with respect to that segment of the contract that we feel may possibly be released, we would not release that without the concurrence of Louisiana Power and Light and this is done where the provision is in the contract or not in the contract. This is of custom in the trade with us and probably with most producers and after

talking to Louisiana Power and Light, it was their position that they wanted no part of the contract given to the Federal Power Commission, which we are totally in accord with.

THE COURT: All right. I will hear from other counsel.

MR. GOOCH: Well, Your Honor, that is satisfactory with me. Personally I would be happy to hand it to the Court in camera and let the Court look at it. I don't care about seeing it myself and I have no objection whatsoever if they would hand the contract to the Court and let the Court look at the volumes and——

THE COURT: Could we have a stipulation——

MR. GOOCH: I just want to add, so there won't be any misunderstanding about that, I am sure that Mr. Purley understands, under section 8 of the Natural Gas Act, we could have compelled Texaco, the natural gas company is subject to our jurisdiction, but we do not want to do that and we don't intend to do that. I don't particularly care to see it, but I would like the Court to see it. I do not ask that it be made a part of the exhibits, I won't ask that they make it a part of the public record. I don't ask anything other than the—hand it up and let the Court look at it and determine whether the—what the volumes are and so forth, whether they are material to this case, and then work out, in camera, with Texaco and Louisiana Power and Light and the Court without our presence, as to what portion should be admitted and included in the record.

MR. PURLEY: Your Honor, may I say this.

THE COURT: Yes, sir.

MR. PURLEY: In response to that, assuming Mr. Gooch's position is correct, still the rule that I have outlined with respect to the materiality and the need for protective orders would still apply, notwithstanding what our posture may or may not have been before the Federal Power Commission. That is a right afforded to us under the Federal Rules. My point is that it is not material, the system is in no way jurisdictional——

THE COURT: Well, we don't have your system, we have somebody else's system. We are not worried about your system.

MR. HARVIN: We have no objection whatsoever, Your Honor, to his handing and your examining it in camera.

THE COURT: Well, is there any portion other than the amounts of gas deliverable under the contract, is there

any other portion in that——

MR. HARVIN: I don't care about the prices or anything like that.

THE COURT: All right.

MR. HARVIN: I do have a couple of questions more, though, I want to find out about this, just a little bit more about this arrangement before we wind up on that.

THE COURT: Could we have a statement from Texaco and LP&L, just to the amount of gas deliverable under the contract—under the terms of the contract.

MR. PURLEY: Your Honor, I really don't know.

THE COURT: I don't mean the statement here, just a written statement filed in evidence.

MR. CARTER: Yes, Your Honor, we are perfectly willing, Your Honor, we don't care a thing about it ourselves. Texaco are good people and we have a relationship with them and we are going to honor it, so that is the reason why we are taking the position that we have no objection at all to either the Court seeing the contract or, as you have now suggested, Your Honor, submitting to you that portion of the contract with respect to the amounts. We are certainly willing to do that.

THE COURT: All right, sir.

MR. PURLEY: Your Honor, our position is a little bit more stronger than Mr. Harvin's position, but I believe that we could work out a stipulation, as long as we stay away from the very key provisions of that contract.

THE COURT: All right, sir. I think just the amounts; the delivery formula, whatever it might be, if we could get that part I think it would be sufficient.

BY MR. HARVIN:

Q. Mr. Wyatt,——

THE COURT: Just a second, we probably should have a time limit on when that would be produced. Mr. Carter, I will let you take care of that.

MR. CARTER: A time limit on what, Your Honor?

THE COURT: When that should be produced, in other words, I sort of want to get started on this thing.

MR. CARTER: Well, if Texaco can—if we can get together with Mr. Purley——

THE COURT: If I can have it in seven days, that is fine. I am out of town for the next week.

MR. CARTER: Right, easily.

MR. HARVIN: Your Honor, I don't want any requests without getting some stipulation together like that, to delay this thing because we are still under restraint in this matter.

THE COURT: Yes, sir.

MR. HARVIN: And Mr. Carter's standpoint is fine, he can let it drift along.

THE COURT: No, Mr. Carter is not letting it drift along. This is as soon as the Court can get to it, that was the limiting factor here. The reason we are here and continuing tonight is that I have to be out of town tomorrow and all next week.

MR. HARVIN: Yes, sir.

By MR. HARVIN:

Q. Mr. Wyatt, this first contract that you mentioned with Texaco is for a regular and continuing supply of gas at the Nine Mile Station. It is already in effect, isn't it?

A. Yes, it is.

Q. And you mentioned another contract with Texaco——

A. That is not in effect.

Q. It is not in effect yet?

A. Yes.

Q. But it has been executed between you, has it not?

A. Yes, it has.

Q. And it is to become in effect to supply additional gas to you in the event that you are pinched by the curtailment program of United—that United has or if you have other gas shortages, isn't it.

A. No, not to my knowledge.

Q. What is the triggering effect?

A. Additional generating units in the future.

Q. So, if you have additional requirement, there at Nine Mile Station, they will be supplied by this contract?

A. Additional generating unit requirements, yes, not just additional requirements.

Q. All right.

MR. HARVIN: We would like to request that the essential terms of that contract also be provided, Your Honor, because we think that long-term contracts are pertinent here.

MR. PUGLES: Your Honor, I am making the same objection as I raised before in this concern, that is on the question of materiality.

MR. CARTER: Your Honor, we are not talking about a contract that is not even in effect at this time. We are talking about a contract for future execution, based on something that must happen in the future and heaven only knows how long in the future. I think we are going terribly far afield when we get to that point, as well as the fact, Your Honor, that it is not relevant.

MR. HARVIN: Well, we would like the opportunity to see whether it is relevant or not and also to see what its terms are as to how it comes to effect, rather than just having an off the record— or off the witness stand comments made about it, Your Honor.

THE COURT: Could we make the same sort of stipulation to add to the information in this contract, the conditions on which it becomes effective.

MR. CARTER: Yes, Your Honor, we will do so at the Court's request.

THE COURT: All right, sir, fine.

MR. PUBLEY: When it comes into effect, Your Honor, I am sorry?

THE COURT: The provision that we have in the other contract—the same provision—that add to that the terms on which it becomes—the time of the provisions which provide when it is to become effective. In other words, what it is suppose to supply to fulfill the conditions that have just been brought up by whether the only purpose of it is to fire additional generators. So if we could have that provision along with the provision of the amounts, that is what we want, sir.

BY MR. HARVIN:

Q. Mr. Wyatt, referring to the next exhibit, the Commission's exhibit #1, which was the——

MR. GOOCH: If Your Honor, please, I think I have that marked wrong. One was a long time ago, this must be around 21 or so for the Commission, it is 21. Forgive me for interrupting.

THE COURT: That is all right.

BY MR. HARVIN:

Q. Referring to the Commission's exhibit #21, the certified copy of LP&L's registration statement with prospectus filed as late as April 7, 1971, that prospectus dated April 6, 1971 and filed April 7, 1971, was the one in which LP&L

stated "After June 1971, the company expects to be able to offset any foreseeable gas curtailment by burning oil", was it not?

A. That is what that says, yes, sir.

Q. And you said, I believe, that you were familiar with the petition or complaint that your lawyers filed in this case?

A. Generally so.

Q. Those petitions and complaints, which were carried first to Judge Dawkins, seeking restraint and then expartiated to Judge Wisdom, seeking restraint, contained no statements whatsoever about your capacity to fuel your plants by burning oil after June, 1971, as is contained in that registration statement, do they?

A. They do not, but I think we best explain to the Court the circumstances under which we can burn oil, to be sure that everyone understands it because we make reference to after June, that Sterlington would be able to utilize oil in the emergency basis for one unit, not four but one. We also have provisions at Nine Mile for emergency burning of oil but strictly emergency, not on a continuing basis.

Q. For up to 36 hours?

A. Yes, sir.

Q. Now, that is what you indicated in your complaint, but that is not the way it is stated in your prospectus, was it?

A. I would say that that is not all—all that I just said was not in the prospectus, no.

MR. HARVIN: Thank you, that is all.

THE COURT: Is this all for this witness?

MR. CARTER: I think so, Your Honor.

THE COURT: You are excused, sir, thank you very much.

MR. CARTER: Call Mr. John Nelson as an adverse witness.

JOHN NELSON

called as an adverse witness by Louisiana Power and Light Company, and having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY MR. CARTER:

Q. Give us your full name and address, please?

A. John C. Nelson, Houston, Texas.

Q. Mr. Nelson, by whom are you employed?

A. United Gas Pipeline Company.

Q. Mr. Nelson, how long have you been with that company?

A. Thirty-four years.

Q. And what is your job, right now?

A. Executive Vice-President.

Q. Are you the next man beneath the President?

A. Yes, sir.

Q. And what is your educational background, Mr. Nelson?

A. I have a bachelor and a master's degree in civil engineering.

Q. You are an engineer then, by education, and also by your work, is that correct?

A. Yes, sir.

Q. Mr. Nelson, as Executive Vice-President, do you have a good general knowledge of the proceedings that have been characterized here as the curtailment proceeding in the certificate proceeding of United before the FPC?

A. Generally, yes, sir.

Q. Are you familiar with this so-called non-compensatory rate proposal that was testified about earlier, Mr. Nelson, in which I identified in evidence here as LP&L—Wyatt #3 and also it was LP&L—Belvin #5? Are you familiar with that document? Are you familiar with that non-compensatory rate proposal?

A. I am not familiar with this page, Mr. Carter. I have seen some figures similar to this.

Q. Well, without making any effort to remember those exact figures, let me ask you if you are aware that United had made such a proposal as is indicated by those figures with respect to those companies and in that question, to be fair to you; I am not asking you if each and every number over there is correct. I am only asking you if the proposal is correct insofar as it relates to those companies and indicates an increase of approximately six and a percentage point?

A. No, sir, my opinion—this is not a proposal for these companies and as I recall these figures were brought out in one of the settlement conferences in Washington where the question was asked "If you took your latest rate filings, which is CP71-41, and allocated cost to these customers, what would their cost be and what would the deficiency be."

Q. That's what those figures are, is that correct?

A. That is what that is. I do not think it is a rate proposal.

Q. And did your company go to the companies on that list to discuss that proposal?

A. Not this proposal. Mr. Haslanger went to these companies and discussed the proceeding.

Q. Well, did not Mr. Haslanger go to these companies and discuss the proposal to increase the rates?

A. He discussed, I think what was said by the staff, that the settlement proposal—what was required to certificate the sale, namely compensatory rates. He also discussed—I was not there, of course, and I don't exactly know what he did discuss and I think what he said, it was his definition of the compensatory rate would be the gas cost in the field plus some reasonable transportation charge.

Q. And he was suggesting to them that the Federal Power Commission had indicated that it would want these increases to be effectuated if there were going to be a certificate issued?

A. Well, he—I don't know that he said that.

Mr. Gooch: I'm sorry, I am going to have to object to that. The Federal Power Commission has indicated nothing, anything that they indicate is indicated by virtue of an order issued publicly and available to all parties. I guarantee you that the Federal Power Commission doesn't ask Mr. Haslanger, whoever he is, to speak for them.

The Court: Sustained.

By Mr. Carter:

Q. Mr. Nelson, all of the parties were at that settlement conference, in Washington, were they not? At least they were invited there, were they not?

A. Yes, sir.

Q. Mr. Nelson, are you generally familiar with the filing made by United on May 14, 1971? The one that has been introduced in this proceeding?

A. In compliance with order #431?

Q. Yes.

A. Generally.

Q. Is it correct that that proposal seeks to place companies like LP&L in a position where, unless it agrees to an increase in rates to that paid by the Citygate customers at a one hundred per cent load factor, it would be then the first category to be curtailed?

A. Well——

Q. Look at the bottom of page 3 and on page 4, if you want to, to answer my question.

A. Could I have your question again, Mr. Carter?

Q. Yes, I asked you if it were correct that the proposal seeks to place LP&L or companies like LP&L, in a position where, unless they agree to an increase in the rates to that paid by Citygate customers at a one hundred per cent load factor, that it would be the first to be curtailed—or they would be the first to be curtailed.

A. Well, I think it says category #5.

Q. Yes.

A. If you were not—that would be the first order of curtailment, if you were not up to the one hundred per cent load factor at Citygate rate.

Q. So the answer to my question is yes.

A. Yes.

Q. Now, what happens if LP&L would agree to the rate increase?

A. Well, I presume, if they agreed to the rate increase, they would be in a different category.

Q. I see, then United would be willing to give them more gas?

A. Well, they would be willing to prorate the supply of gas that they have on that order of curtailment.

Q. Give them a better proration, is that correct?

A. Give them a different priority.

Q. All right. Does United have contracts with clauses that require United, whenever it has an interruption in service, to reduce the demand charges and/or to give a credit to the customer or substitute fuel burned by the customer as a result of interruption?

A. I am not too familiar with this kind of contract, Mr. Carter.

Q. Well, you are familiar enough to know that United does have such contracts.

A. I know we have some contracts, yes, sir.

Q. And would you check your document again, that you have in your hand, and look at 12.3 and tell us if United does not seek, thereby, to eliminate those obligations?

A. Where is this, Mr. Carter?

Q. 12.3, you will find it in the tariff, the revised tariff, Mr. Nelson.

A. Now, if you will tell me the question again.

Q. Yes, sir. I just wanted to ask you if that provision, in your revised tariff, would eliminate the obligations?

A. It was adopted by the FPC and the customers.

Q. The provision, if approved by the FPC, would relieve you of those obligations?

A. Yes, sir.

Q. And that would change the price that United would receive under those contracts?

A. No, sir, I don't believe it would. We are selling them gas at the same price.

Q. It would alter your price structure to the extent that you would not have to recompensate them for the relief of those obligations, Mr. Nelson, wouldn't it?

A. Well, to that extent it would.

Q. Now, Mr. Nelson, let's talk more broadly here about these proceedings that I asked you about earlier, the curtailment and certificate proceedings. It is my understanding, from among all of those books there, and I guess you would know more about that, that is has been brought out that United first became aware that it might risk the possibility of a gas shortage some time around May of 1968, is that your understanding of it?

A. No, that could be but I was thinking it was the fall of 1969.

Q. Well, don't you know that some of the witnesses testified—well, let me back up to refresh you a little bit. Do you know a man by the name of Mr. Miller, who represents Monsanto Chemical Company?

A. Yes, sir.

Q. He got some sort of discovery proceeding going to get into United's files or get some of their documents?

A. Yes, sir.

Q. And as a result of that discovery work, of Mr. Miller, didn't it then become known that, in fact, United first became aware in about May 1968 that there might be a shortage out in the future?

A. Well, I am not aware of that, Mr. Carter. I am not too much awarre of Mr. Miller's cross examination to begin with.

Q. All right.

A. Now, he might have found, in May of 1968, some of our so-called May version figures where you look forward and look at the shortage on a peak day but there might have been a temporary imbalance of supply.

Q. Well, by the good grace of Mr. Gooch, we have the whole record here, so we will have to call it to the Court's attention later. I won't dwell on it with you, but let me ask you this: You did take on new customers and increase deliveries to existing customers after May of 1968, did you not?

A. I think most of those were committed prior to that time, in 1966 and 1967.

Q. But you did take on new customers after May of 1968?

A. They came into being but the actual deliveries started, it was after that time.

Q. And you did increase deliveries to existing customers after May of 1968?

A. Yes, I believe we did, but again the commitments for the sale of that gas was made prior to May of 1968.

Q. In some instances?

A. Yes, sir.

Q. In some instances, though, the commitment was made after May of 1968, was it not?

A. I am not too familiar with that, Mr. Carter.

Q. You are familiar enough to know that in some instances the commitment was made or the contract was made and a commitment was made after May of 1968.

A. I know of one or two, yes, sir.

Q. Well, in your—well, first of all, isn't it correct and wouldn't you agree with me that new customers that come onto your system now, and during the past year or two, are paying rates higher than those who you might call embedded customers, customers who have been on your system for ten twelve or fifteen years prior to now?

Mr. Harvin: I hesitate to interrupt, Your Honor, but it seems to me, for some time now, we have been on matters which really don't have anything to do with jurisdiction.

Mr. Carter: This has a considerable bit to do with jurisdiction. If Your Honor will remember, the third point, and I would rather not say any more in front of this witness, but the third point that we talked about in the pretrial conference——

The Court: Well, the witness is under cross examination, the objection is overruled.

By Mr. Carter:

Q. Mr. Nelson, do you remember the question?

A. Yes. One of the sales that I remember, Mr. Carter,

is a jurisdictional sale and it is the same rate as all of the others and the other customer I think of is a very small increase in volume in existing industrial that come on at the same rate that he had had.

Q. Well, aren't your customers, in the past two or three years, being permitted—aren't you being permitted to charge them a higher rate than you were able to charge them prior thereto by the FPC?

A. Well, we are collecting—we have one rate case, 70-13, that is up—that has been settled we think. It has been up at the Commission—the Commission has not approved it yet so we are collecting rates now in effect under bond.

Q. Now, in your curtailment proceeding, as you call it, you are contemplating or you are proposing that you make no distinctions between your customers on the basis of how old they are, are you?

A. That is correct. We are not.

Q. And you are making no distinction in your curtailment proceeding as to what differentials in rate any of them are paying to you, are you?

A. In the proposal now?

Q. In your proposal in the curtailment proceeding, other than that category #5 you have just introduced. I will make that exception.

A. We are not.

Q. Except for that category #5 situation, you are making no distinction on the basis of any rate differential between customers?

Mr. Harvin: I hate to interrupt again, but the question was predicated on the curtailment proceeding and the category #5 Mr. Carter mentioned was in response to order #431 and not in the curtailment proceeding.

Mr. Carter: Your Honor, obviously the witness is making a reservation, because of that I was trying to help him to get his answer by making that distinction.

By Mr. Carter:

Q. Mr. Nelson, you and I understand one another now, do we not? I am asking you if you are making any distinction in the curtailment proceeding between your customers on the basis of how much they are paying?

A. No, we are not right now.

Q. Now, if you, therefore, make no distinction between

customers on the basis of their age and how much they are paying and no distinction other than these categories that you described in your filing, then if you were to curtail on the basis of those categories, you are going to be taking away gas from your old and new customers alike, are you not?

A. Are you following through and saying that the Commission has approved #431, all of the customers approved are filing under #431?

Q. Well, all of these questions have to assume, Mr. Nelson, that you are making the proposal on the basis that you will try to get the Commission to approve your proposal.

A. Yes, sir.

Q. So I am asking you the question, if under your proposal and if you get approval from the Federal Power Commission, you will not be curtailing your old and new customers just alike?

A. Unless they are in the same category.

Q. If they are in the same category.

A. We will curtail them alike.

Q. All right, Mr. Nelson, does United Gas furnish gas beyond Mississippi and toward the north of the country?

A. We sell gas to pipelines that take gas north of the Mississippi.

Q. Yes, sir, and beyond Mississippi, how far does United Gas take the gas?

A. United does not take it north of Mississippi.

Q. It does not take it north of Mississippi?

A. No.

Q. Do you have pipeline customers that take it north of Mississippi?

A. Yes, sir.

Q. All right. Being in this business, this gas business, as long as you have been, I suppose you are aware that the utility plants, like Louisiana Power and Light Company's plant in the north and eastern part of the country, rely principally for fuel on coal and oil, do they not?

A. Well, as I understand it, they have interruptable contracts with pipelines and their alternate fuel is coal and oil.

Q. Yes, but gas, to them, is alternate fuel, is it not, or stand-by fuel?

A. Well, when available.

Q. Their principal fuel, as I stated in my question, is coal and oil, is it not?

A. I don't believe so.

Q. You don't?

A. No, sir.

Q. Mr. Nelson, are you familiar with a map that has been produced by United and I think it has principally been produced in a smaller form by United, which map I have identified in this proceeding as LP&L—Belvin #2, so far?

A. Yes, sir.

Q. Now, in your past job history with United, have you worked at times in the transmission department?

A. No, sir.

Q. You have never been involved with the transmission?

A. Not with the transmission operations.

Q. I see. Mr. Nelson, are you familiar enough with this map to know what this green line system represents?

A. Yes, sir.

Q. What does that represent in your mind?

A. That is the old district #5 system, which was at one time an intra-state system.

Q. I see, and that is the system that is now, along with one out here in the Lafayette district, proposed by United for certification to the Federal Power Commission, is that correct?

A. And some small lines in Texas.

Q. Mr. Nelson, do you know enough about the system of United to be able to tell me if there is any gas that goes to that green system that is produced in any state other than Louisiana?

A. No, sir. There is no gas produced in another state, other than in Louisiana, going into that system.

Q. All right. Do you know—well first of all, does United have contracts with each producer that sells gas to you?

A. Yes, sir.

Q. Are you familiar, rather closely, with the sale activities of United?

A. From the producers standpoint?

Q. Well, from United's standpoint.

A. Well, you were asking about producers.

Q. Yes, sir, but I am now asking you for a moment, if you are familiar with the sale activities of your company.

A. In a general way, yes, sir.

Q. Now, do any of those contracts, that you have with

producers, contain what I refer to as a restrictive provision?

A. Yes, sir.

Q. That is provision that restricts the gas that they produce and sell to you to transmission delivery and consumption, wholly within the state of Louisiana?

A. The contracts that we have on the green system, the number of contracts that we have on the green system have provisions in them that does not allow us to take them out of the state.

Q. As a matter of fact, our friends that have now departed us, I believe, from Texaco, have such a contract with you?

A. Yes, sir.

Q. Up here on your Paradis line, don't they?

A. Yes, sir.

Q. That is the line that runs generally from this area over here that says Paradis, the green line that runs across your black line and then jets up past Ama and over toward Algiers?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. And that gas amounts to roughly half of the total of that whole green system, doesn't it?

A. No, sir, I don't think so.

Q. Well, aren't they delivering about seventy million Mcf?

A. No, I think they are delivering more than that, Mr. Carter, but it likes a long way being half of the supply of the system. I think maybe nine hundred billion feet connected to the system.

Q. I am referring only to the green system.

A. Well, that is what I am referring to.

Q. According to my figures, that I am getting from you—from United that is—the net total delivered to the New Orleans area from the green system is about one hundred fifty-five million, sixty thousand nine hundred twenty-eight Mcf.

A. Per year?

Q. Sir?

A. Is that per year? What period of time is that?

Q. It says annual Mcf on here so I take it that is a year.

A. All right.

Q. And what I am asking you, is that don't you know that Texaco is delivering about seventy million of that total?

A. Yes, sir. I don't know what the exact figures are.

Q. And that is gas that is produced by Texaco in Louisiana, shipped through that green system, totally in Louisiana, delivered and consumed totally in Louisiana?

A. That is correct, yes sir.

Q. As a matter of fact, Mr. Nelson, none of the gas in that green system can possibly get out of the state of Louisiana, can it?

A. That is correct. By contract we couldn't take it out if we wanted to.

Q. Right. And you are trying to observe those contracts with those producers that are restricted, are you not?

A. Yes, sir.

Q. And that includes your own fellow subsidiaries, I call it that because I understand you are wholly owned by Pennzoil and that is Pennzoil Producing Company.

A. You are talking about——

Q. You have a contract with Pennzoil Producing, don't you? It restricts their gas, I should say.

A. What field is that, Mr. Carter?

Q. Well, Lirette.

A. Lirette is not restricted, we can take that inter or intra, or into the green system or into the black system.

Q. Don't you have two contracts, Mr. Nelson, and it is up to you which contract you are going to deliver under. You can take the gas and put it into the green system and you run to the intra-state contract and you can take it and put it into the black and it is under the inter-state contract, isn't that right?

A. I do not know that.

Mr. Harvin: Your Honor, I object. That was all covered by Mr. Cassin.

The Court: The objection is overruled. Proceed Mr. Carter.

The Witness: I don't know whether we have one or two contracts with Pennzoil.

By Mr. Carter:

Q. But you know that Pennzoil can deliver it to you and you can use it either into the green line, intra-state, or the black line-inter-state, is that correct?

A. Yes, sir.

Q. But you also know that they do not intermingle it, do they?

A. Well, I would suspect not. There are two meters there.

Q. Right. There are two meters there. One for the gas that is going into the green system and one for the gas that is going to the black system, isn't there?

A. I think so.

Q. Now, you do not put in any—I will call them intrastate producers, those with restrictive provisions—you do not put any of their gas into the black line, do you?

A. No, sir.

Q. Mr. Nelson, you know who Mr. Belvin is, don't you?

A. Yes, sir.

Q. He is an Executive Assistant to the President, is he not?

A. Senior Vice-President.

Q. Senior Vice-President. Mr. Belvin testified and I wanted to see if you would agree with him. I am quoting now from his testimony at page 19 of his direct, prepared testimony before the FPC where he said in answer to the question, "Why does this situation exist?" and I have to back that up a little bit to tell you that he said this before that, that there were two locations in our system where we are able, at times, to deliver a larger proportion of the customer's requirements than in other areas. These two areas are the New Orleans and Mobile-Pensacola areas and then the question came, "Why does this situation exist?", and I now quote his answer, "In the New Orleans area, this situation is due to the fact that the supply of gas for our customers in this area cannot be moved out of Louisiana or co-mingled". I repeat for emphasis "or co-mingled with other gas being moved out of Louisiana under the terms of our gas purchase contract". Is that a valid and truthful statement that Mr. Belvin made?

A. Yes, sir, it is.

Mr. Harvin: It seems to me, Your Honor, that to be fair with the witness Mr. Carter ought to point out that Mr. Belvin said, on deposition and he went on to explain that that wasn't exactly accurate.

The Court: Well, if the witness wishes to explain the Court will allow him to explain.

The Witness: Mr. Carter, let me, if I could, put that in

my words. We have producer contracts on the green system that have provisions in them that says the gas cannot be moved out of the state. As far as I know, there is no provisions in those contracts that says it cannot move gas from the black system into the green system and retain it and sell it in the green system.

By Mr. Carter:

Q. Mr. Nelson, do you agree that all of the sales of gas to United that go into the green line, now these are sales from producers to United, that go into the green line, are intra-state sales?

A. They are intra in that the provision says you cannot move it out of the state.

Q. And you have already told us that you abide by those provisions and honor those contracts?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. Mr. Nelson, let me clarify something and I probably won't want to ask another witness. I have an idea that you may not know. I have some output and input figures with respect to the gas in the green system and I am wondering if you would be able to validate those or shall we have to go to the gentlemen, I think Mr. Barnett,

A. He verified it.

Q. Would he have to——

A. Yes, sir.

Q. You wouldn't be in a position to verify them, would you?

A. No, sir. I did not look at the figures.

Q. I think he did and I will call him instead of you.

Mr. Carter: That is all I have of Mr. Nelson.

Mr. Gooch: Your Honor, I have a couple of quick questions.

Direct Examination

By Mr. Gooch:

Q. Mr. Nelson, again you were interrogated about the United exhibit #14, which is the filing that United made in connection with the Commission order #431. If it is not clear, let's make it clear. Has the Federal Power Commission allowed you to put that tariff into effect?

A. It has not.

Q. Is it in effect right now?

A. No, it is not.

Q. Now, Mr. Nelson, you were asked about some discovery that a Mr. Miller did on behalf of Monsanto. Do you recall those questions?

A. Yes, sir.

Q. That was in connection with the curtailment case that was pending before the Federal Power Commission, is that correct?

A. Yes, sir.

Q. And wasn't United induced to cooperate with Mr. Miller so that Monsanto could make a full discovery so that all material facts could be brought out before the Federal Power Commission?

A. Yes, sir.

Q. Now, you were also asked some questions about increases in delivery, I am not quite sure I followed it, increases in delivery to certain customers after May 1968, were you not?

A. Yes, sir.

Q. Were those increases in delivery certificated by the Federal Power Commission?

A. Yes, sir, they were.

Q. And you were asked a series of questions about being —about charging higher rates and I don't pretend that I follow the questions but let me ask you this. Are your rates, as to resale and transportation customers, regulated by the Federal Power Commission?

A. Yes, sir.

Q. Now, Mr. Nelson, do you think the Federal Power Commission can permit you to discriminate against various classes of customers?

A. No, sir, I don't.

Q. Now, you were asked some questions about some gas going into the green system from Louisiana. Most of our questions have, for some reason, been centering around that area, so let me broaden my question. Do you have producer contracts certificated by the Federal Power Commission in other areas of Louisiana other than the New Orleans division?

A. Yes, sir.

Q. And those sales, even though they are located in the state of Louisiana, are certificated from inter-state com-

merce by the Federal Power Commission, aren't they?

A. Yes, sir.

Q. Now, Mr. Nelson, I have a question that I am sorry to ask in this form so let me ask it this way. You have testified about how you observed the restrictions in the contracts on those producers whose gas goes directly into the green system, haven't you?

A. Yes, sir.

Q. Have you been put on notice that the staff of the Federal Power Commission were concerned that those sales are jurisdictional sales?

A. I have heard that, yes, sir. I heard the statement made.

Q. That issue then, will come before the Federal Power Commission to determine whether or not those sales to the green facilities, the sales too are jurisdictional?

A. Yes, sir.

MR. GOOCH: I believe that is all I have.

MR. CARTER: I believe I do have one more question, as a result of that little intermission.

RE-CROSS EXAMINATION

BY MR. CARTER:

Q. Mr. Nelson, at page 12, I think it is but I can't be sure, of the proceeding before the FPC, Mr. Cassin your Vice-President and General Counsel, said in a colloquy with the presiding examiner and the presiding examiner said, following the preceding case, "Non-jurisdictional by the Federal Power Commission", and Mr. Cassin said "Yes, and would come under the jurisdiction of the Louisiana Public Service Commission by virtue of which it meant the rates would have been lowered to these Citygate customers because the Louisiana Public Service Commission is a little more rigorous, considerably more rigorous in its regulatory attitude than the Federal Power Commission". Are you familiar with that statement by Mr. Cassin?

A. Yes, just what you read there.

Q. You haven't heard of it before but you do agree with Mr. Cassin's statement, do you not?

A. Well, I don't think you could say that. We don't know what the Louisiana Public Service Commission would do.

Q. Well, you remember the Florida Parishes case, don't you?

A. Yes, sir.

Q. Let me show you footnote #9 of the Federal Power Commission's decision in that case and I point out to you, at the bottom of that, page #565 of the FPC decision. Would you read that to yourself?

A. All right, sir.

Q. In that case, it is pretty clear that the end result of your being under the jurisdiction of the Federal Power Commission, rather than the Louisiana Power Commission was to bring about a nine cent per Mef increase in your gas.

A. At the time of that decision, yes, sir.

Q. That was about 1965 or 1966, I believe Mr. Cassin said earlier?

A. I don't know when it was.

MR. CARTER: I believe that is all.

MR. BELVIN: We have no questions.

THE COURT: You are excused, sir. Thank you very much. May I ask you, Mr. Carter, how many more witnesses do you have?

MR. CARTER: I am going to have to—I will have a few short questions for Mr. Belvin and an even shorter set for Mr. Barnett. Mr. Barnett will be pretty totally related to those figures that I just mentioned.

THE COURT: All right, sir.

MR. CARTER: I think we are getting along fairly well, Your Honor.

THE COURT: Well, let's proceed then.

MR. CARTER: All right, let's do Mr. Belvin then. Mr. Belvin, would you come forward?

MARTIN THOMAS BELVIN, JR.

called as an adverse witness by Louisiana Power and Light company and having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY MR. CARTER:

Q. Give your full name and address, please, sir.

A. My name is Martin Thomas Belvin, Jr. I reside at 2041 Holly Oak Street, Shreveport, Louisiana.

Q. How long have you been with United Gas Pipeline Company, Mr. Belvin?

A. Twenty-three years.

Q. And did you go with that company right after you got out of school?

A. Yes, I went with United in 1948.

Q. And I believe you told us the other day that you went to Texas A&M?

A. Yes, sir.

Q. And you got a degree in engineering?

A. Bachelor of Science and Civil Engineering.

Q. And your job with United Gas is just what, right now?

A. At the present time, Executive Assistant.

Q. And you are an assistant to whom?

A. To the Senior Vice-President of Operations and Engineering.

Q. And he is who?

A. Mr. C. W. Hollingshaud.

Q. All right, and I believe the company has what they call a supply and demand committee?

A. Yes, sir.

Q. And you are on that committee?

A. Yes, sir, I am a member of that committee.

Q. And that committee is wrestling with the problem of trying to do just what its name is, get enough of supply to meet the demands, is that right?

A. Sir, we are attempting to fill out two storage fields at this time. That is our prime operation and function, sir.

Q. All right. Mr. Belvin, there has been a map already introduced into evidence that we talked about with you the other day, so this will have some continuity. I am showing you what is now Commission exhibit #1, which I identify to you as LP&L—Belvin #1. Do you recall that map?

A. Yes, sir.

Q. And is it correct that this map, this large map that I have in front of you, which has been identified as LP&L—Belvin #2, is an identical map with the LP&L—Belvin #1 with respect to the New Orleans division.

A. Yes, the best I can tell, it is a blow-up of the New Orleans division, yes, sir.

Q. So that the green lines on LP&L—Belvin #2 would be the same as the green lines on Commission exhibit #1?

A. Yes, sir.

Q. Now the green line, Mr. Belvin, constitutes the system that I believe you have referred to in your testimony before the FPC as the intra-state system and if you need to re-

fresh yourself, I refer you to pages 2008, particularly 2018.

A. Yes, sir, I did use that term but like I told you the other day, there was an explanation at some other page, I don't remember where I said, in using that contradiction, that was the system that kept the gas within the state of Louisiana.

Q. Yes, sir, in fact, that is my next question. You stated, in your testimony, that the green system was, and I am quoting now, "capable of keeping the gas wholly within the state of Louisiana", isn't that correct?

A. Yes, sir, that is correct.

Q. Now, I think it has already been somewhat established, but just so the record will be clear as to your testimony, is the pressure in the black system higher than that in the green system?

A. Yes, sir. It is normally higher.

Q. And do you have valves and regulators to keep the gas in the black system from flowing into the green system?

A. From flowing into the green system?

Q. From flowing into the green system.

A. No, sir, we have valves and regulators and we do have two regulators that do let the gas flow into the green system from the black system.

Q. Well, maybe I should ask my question a little differently and you will understand it better. Let me ask you, if it isn't correct, that you have valves and regulators which separate the two systems or keep them separate unless you turn a valve that would let the gas from the black system into the green system?

A. Mr. Carter, that is true as far as the valves, the regulators are set automatically and they do what they are instructed to do by our pre-setting on them, sir.

Q. Right. And even there you—United is able to control the flow of gas so that the gas from the black system can be kept out of the green system or vice-versa. You can, by doing a setting, make gas go from the black system into the green system, isn't that right?

A. Yes, sir, that's right.

Q. And do you have meters that count and record all of the gas that goes into the green system?

A. At certain locations, there are meters Mr. Carter. At other locations, there are not meters.

Q. Well, what I am getting at, is that, you can account

for and you know exactly how much gas goes into the green system, do you not?

A. Normally, yes, sir.

Q. And the way you make a count of those—something like gas, is to meter it, isn't it?

A. Yes, sir.

Q. And so the way you keep the count is you pass the gas through a meter?

A. Yes, sir, that is right.

Q. And all I am asking you, is, don't you meter all of your gas that flows into the green system?

A. Mr. Carter, I said normally we do, but there are connections between the systems where there are no meters and the gas will not be measured when it goes from one system to the other.

Q. Just what do you mean by "not being measured"—by gas not being measured as it goes into the other system.

A. I didn't say other system, I said from the black system to the green system.

Q. Yes, well, where do you have a place where there is no measurement of the gas?

A. Sir, I didn't—I said there are points that are connected that do not have measurements, sir. I didn't say we are doing it.

Q. All right.

A. There are points we discussed the other day——

Q. All right, that is all I wanted to know. Now, Mr. Belvin this has been partially covered and so the record will be plain about it, is there any gas that goes into the green system that is produced in any state other than Louisiana?

A. Mr. Carter, I do not know whether I am qualified to answer that because I do not know—the way I understand it——

Q. Well, let me ask you this then.

A. The Timbalier Bay gas, sir, is located off-shore. It is in what I understand is a disputed area and I do not know whether it is in the state of Louisiana or whether it is outside, sir.

Q. Well, Mr. Belvin, who would be able to answer that?

A. Sir, I think that is before the Court right now, the way I understand it, sir.

Q. Who from United, could answer my last question, as to whether there is any gas that goes into the green

system that is produced in any state other than Louisiana?

A. Well, sir, other than that one exception, I guess I can answer that. There is none other than that one area, sir, that I know of.

Q. When you say that one area——

A. I am talking about the Timbalier Bay off-shore area, sir.

Q. Is there any gas in the green system, Mr. Belvin, sold outside of Louisiana?

A. No, sir.

Q. And I think it is plain, from the map, just so the record will reflect it as well, is there any part of the green system that is located outside of Louisiana?

A. No, sir.

MR. CARTER: Your Honor, I want to offer LP&L—Belvin #2.

THE COURT: In the absence of any objection, it is accepted.

Thereupon the exhibit marked LP&L—Belvin #2 was received into evidence and filed with the clerk of court.

MR. CARTER: Those are all of the questions I have of Mr. Belvin.

THE COURT: Are there any further questions of this witness?

MR. GOOCH: If the Court please, could Mr. McHenry ask these questions?

THE COURT: Yes, sir.

MR. MCHENRY: Mr. Court Reporter, my name is George W. McHenry. At this time, Your Honor, we would like to introduce the original of the deposition taken of Mr. Belvin a few days ago. Do you have the original of that deposition——

MR. BARBER: May it please the Court, Mr. Belvin has the original. He has made his corrections, a typed list of them, which needs only his signature. It has been prepared and if he can make that affidavit in front of your clerk and sign it, the deposition will be ready to file. Would you resume the stand, Mr. Belvin and take that with you. If the Court please, we had an agreement with Mr. Carter, due to the shortness of time, that we would follow this procedure in making the original available and we just

hadn't gotten around to getting this done.

THE COURT: All right, sir.

DIRECT EXAMINATION

BY MR. BARBER:

Q. Mr. Belvin, would you please look at the last page of a seven page list of changes, consisting of six pages of changes and an affidavit and read to yourself, not out loud, the affidavit, please?

A. Yes, sir, I have read it.

Q. Are you M.T. Belvin, Jr.?

A. Yes, sir.

Q. Would you sign this in front of this clerk, the last page of the original of your deposition?

(Thereupon the witness complied.)

BY MR. BARBER:

Q. Are you the same M. T. Belvin, Jr. whose signature appears at the end of the original of that deposition and at the end of this list of changes?

A. Yes, sir.

Q. Do the foregoing six pages of changes constitute your corrections to the transcription of that deposition?

A. Yes, sir.

Q. That has heretofore been typed and presented to you?

A. Yes, sir.

MR. BARBER: I will ask the clerk to notarize the original of that, Your Honor.

THE WITNESS: Well, there is one thing, the number two in here is not the one I was looking at when I—that is the number two over there.

MR. BARBER: Yes, sir. Mr. Carter, may it be agreed and stipulated that you have substituted into the original record, in this case the deposition exhibit that is marked Belvin #2 and that a copy has been enclosed in the envelope of the exhibits.

MR. CARTER: Mr. Barber, I don't know what has been done to the deposition, but I have put the large map that LP&L—Belvin #2, into evidence.

MR. BARBER: The one that was marked at the deposition?

MR. CARTER: That's right.

THE WITNESS: We agreed to talk about a green line and all the lines are blue on that map there.

DIRECT EXAMINATION

BY MR. MCHENRY:

Q. Mr. Belvin, I show you a map of part of the United Gas Pipeline System, which has been denominated herein as FPC exhibit #1 and has been referred to by Mr. Carter as LP&L—Belvin #1.

A. Mr. McHenry, this map is the complete United system, sir.

Q. All right. Will you please clarify for me what the green system depicts and the black system and the orange dots labeled A to X. I think that is four questions for clarification.

A. Well, sir, the black system on this map is the certificated system—that has been certificated with the FPC. The green system is the system in the New Orleans division—that we are requesting certification under the FPC docket #71-89 and this system serves in the Lafayette district, sir.

Q. What do the orange point, labeled A through X, depict?

A. Well, sir, those are inner-connections between the two systems where the gas can go either to the inter or intra system, sir. Excuse me, sir, from the certificated to the system where we are asking for certification.

Q. Does the application and =CP 71-89, the Florida Parishes case, reflect that United means for the green system to be inter, that is non-certificated?

A. Mr. McHenry, since we have—United Gas Pipeline Company has asked for certification, sir, I believe we do, sir.

Mr. Carter: We object to this constantly leading the witness, Your Honor.

By Mr. McHenry:

Q. Mr. Belvin, I refer you to exhibit =18 of the FPC, which contains certified copies of the producer's certificates and the application of those certificates in FPC docket #CI 67-98, CI 68-813, CI 68-1146, and CI 70-529, I would refer you to an application filed on July 26, 1966 and CI 67-98 and CI 62-98, by Pan American Petroleum Corporation for a certificate of public means and necessity, authorizing them to sell to United Gas Pipeline Company. I also refer you to this temporary certificate issued by the Federal Power Commission on September 2, 1966 and CI 67-98, authorizing sales by Pan American Petroleum Corporation from the Bastian Bay field. Can you tell me, Mr. Belvin,

whether or not this is certificated, authorizing them to sell from the Bastian Bay field, that is located above "I" on the exhibit above you—before you?

A. Is that the Bastian Bay you were referring to?

Q. Yes.

A. Yes, that is the Bastian Bay field.

Q. All right, having purchased the certificated gas from American Petroleum Corporation—excuse me, that is Pan American Corporation—can you describe the flow of that gas, please, for me?

A. Well, sir, the gas from the Pan American Petroleum Corporation flows—is processed in the Getty Plant. The gas is delivered from the Getty plant to us to a dual twelve inch meter station and it is measured through the dual twelve inch meter station. It goes into a twenty inch line that is connected around a pig trap which is on the thirty-six inch and goes into a thirty-six inch line, sir, over to Lirette or Terrebonne Junction where it is then delivered into the thirty inch line going to Mobile.

Q. All right, part of the gas that comes from the Bastian Bay production facility is diverted into the green system in the Lirette area?

A. No, sir, the gas from the Bastian Bay field is diverted into the green system at Bastian Bay, sir, after it is measured through the dual twelve inch meter station after it enters the twenty inch line. There is a tap on that twenty inch line where the gas is then diverted up to the green system.

Q. All right, sir. I will refer you to the Bay Marshand area and ask you if United purchases gas from certificated —under producer's certificates from that field?

A. Yes, sir.

Q. Will you describe the flow of the gas in the black system after it is purchased from the Bay Marshand area?

A. Mr. McHenry, the gas that is purchased from Bay Marshand, it is also in the same line. They pick up gas from Timbalier Bay and additional gas from Caillou Island. The line then runs in a generally north, northwestern direction to a point on shore in Louisiana which we refer to as Lirette. And Lirette, sir, is connected into several lines. One of the lines being a sixteen inch line from Lirette to Mobile, it is also interconnected with other lines and the gas has, at times, been taken from this black line through a

regulator and put into the green line, which we refer to as the Lirette-Harvey line, sir.

Q. Do I understand you to say that the Lirette interconnection—that part of the gas, that uniform stream of gas is split and a portion of that gas goes into the producer's state and the remaining portion going on to the Mobile line?

A. Some of the gas goes into the green system and the other goes into the black system. The line going to the Mobile-Pensacola area, yes.

Q. All right, Mr. Belvin, referring you to the Shreveport division of Louisiana, could you tell me whether or not United purchases gas from any certificated producers in that area?

A. Sir, my knowledge, all of the producers in that area are certificated, sir.

Q. And does United have any resale customers in that area?

A. Yes, sir.

Q. Are those certificated producers in the Shreveport division and resale customers both within the state of Louisiana?

A. Did I understand you to say both of the producers?

Q. You just told me that United purchased from certificated producers in the Shreveport division.

A. Yes, sir.

Q. You also stated that in the Shreveport division, United had other resale customers.

A. Yes, sir.

Q. Are they all within the state of Louisiana?

A. Yes, sir.

Q. They are all subject to the Federal Power Commission?

A. Yes, sir.

MR. MCHENRY: That is all I have.

THE COURT: Are there any other questions for this witness?

MR. CARTER: Your Honor, we don't have any questions but we have a problem. These people have dumped on our desk about seven or eight minutes ago the list of changes here and I started going through them. There are six pages of changes in this deposition. I have been able to go through one page so far, by disregarding the witness and looking at the changes.

MR. MCHENRY: We will withdraw the deposition.

THE COURT: Withdraw the deposition? All right, sir. It will be withdrawn. What is the identification of that?

MR. MCHENRY: I believe it is FPC #22.

THE COURT: Number 22 is withdrawn, the Federal Power Commission exhibit #22. Is that all of this witness? You are excused, sir, thank you very much.

MR. CARTER: We call Mr. Barnett.

C. C. BARNETT

called as an adverse witness by Louisiana Power and Light Company, having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY MR. CARTER:

Q. Would you give us your name and address, please, sir.

A. My name is C. C. Barnett and I reside in Shreveport, Louisiana.

Q. And you are with United Gas Pipeline Company?

A. United Gas Pipeline Company.

Q. And what is your job?

A. I am the Senior Vice-President in charge of gas management.

Q. All right. Did we ask you, earlier this afternoon, to go over your flow diagrams or any other statistics you had available to you and determine whether certain figures were accurate that were shown to you by Mr. Clann.

A. Yes, sir, I went over the figures.

Q. Do you know Mr. Clann?

A. Yes, sir.

Q. I believe you are old friends?

A. Old friends, yes, sir.

Q. I want to show you LP&L—Barnett exhibit #1 that consists of three pages and is entitled "United Gas Pipeline Company Sales EAX Transportation from New Orleans intra-state system, twelve months ended 12/31/70, adjusted, taken from flow diagrams filed in RP 71-41." Would you look at that document and tell us if you have been able to confirm that those——

A. If you will help me with it, show me a map of what you mean, the intra-state system to be sure I am on the green line and be sure we are talking about the same thing.

Q. Right, let's take Commission Exhibit #1, which is

also the same as LP&L—Belvin #1 and you will notice that it has green lines, purple lines, black lines——

A. Yes, sir.

Q. I am referring to the green system and I ask you if those figures relate——

A. That is why I asked you because the figures that we checked we came up to a point about twenty miles south of Baton Rouge and the line to Baton Rouge was part of the green line and I wanted to be sure we were talking about the same system.

Q. Mr. Clann tells me that these figures are excluding the Baton Rouge area. Is that correct?

A. They are excluding the Baton Rouge area but the Baton Rouge area is about twenty miles south of Baton Rouge and I want to be sure that we have the same specific point where you cut off, except to distinguish between the New Orleans area and the Baton Rouge area, but we consider them as one area.

Q. All right, what did you and Mr. Clann conclude or agree was the cut-off point?

A. Well, we concluded, these are his figures and he said that the cut-off point was at the point where the green line—where the green line crosses the middle thirty which is our thirty inch inter-state line going through Jackson, Mississippi. Now considering, at that point, anything north of that point on the green line is excluded, then the figures that you have given me, we have checked.

Q. Mr. Clann, by the way, advised you that those were not really his figures but were figures that were taken from your file, did he not?

A. Yes, sir. I understood that. What I was trying to make clear—definitions of line and I wanted to be sure that we were talking about the same line.

Q. And those figures on the LP&L—Barnett #1, then with that clarification, are correct?

A. Well, they appear correct in the time that we had to check them.

Q. All right, sir. Now, Mr. Barnett, I show you next an exhibit which I mark as LP&L—Barnett #2, a one page document entitled "Gas Field Input to United Gas Pipeline Company, Lines Supplying New Orleans Area, twelve months ended 7/31/70 adjusted, taken from flow diagram filed in RP 71-41," and I ask you if you and Mr. Clann went over those figures also and did you ascertain from your

own records, particularly your flow diagram, that those are correct figures?

A. If you consider the same point that we discussed on the Market Exhibit, which was a point where the green line on the map crosses our middle thirty inch line—I mean our east thirty inch line going to Jackson, Mississippi. To that point we have checked them and they appear to be all right.

Q. All right, sir, and these two asterisks that were placed along the side of these figures, one for Bastian Bay, opposite the figure one million, ninety-five thousand and the other being along side Bay Marshand, etc. The figure being two million, nine hundred twenty thousand, those asterisks are to indicate that the flow diagram shows that there may be some black gas, as I call it, flowing into the green system to the extent of those two amounts.

A. Yes, sir.

Q. What were those two figures, Mr. Barnett? Does not your flow diagram show that everything else is gas produced in Louisiana, flowing into the green system and being shipped and consumed in the green system?

A. In the green system south of the east thirty inch line, going to Jackson, Mississippi.

Q. Yes, sir, I forgot that but with that clarification, all of that gas, with the exception of those two asterisks, does fall within the question I just phrased?

A. Yes, sir.

Q. It is produced, shipped, delivered and consumed, all in Louisiana?

A. Yes, sir.

Q. Mr. Barnett, do you know how much Pennzoil Producing Company produces in the way of natural gas that is put into the Lirette line?

A. I do not have that figure, Mr. Carter. As previously mentioned Pennzoil Producing Company's gas in the Lirette field comes through a plant and from the tailgate of that plant, we have two separate systems, two separate meter stations, so it can be moved either to the green line or the black line, as the demand so indicates and our dispatcher so dispatches.

Q. As I understand it, Pennzoil Producing Company, first of all that is a wholly owned subsidiary of your parent, Pennzoil United, is it not?

A. Yes, sir.

Q. And Pennzoil Producing Company produces gas, in—what is it—the Bay Marshand or the Bastian Bay field?

A. No, sir, they produce gas in the Lirette field.

Q. In the Lirette field?

A. Yes, sir.

Q. All right, and as I understand it, from all of the other witnesses, the gas can be put directly into either the green line or the black line, depending which of the two regulator devices or metering devices are used?

A. That is right, yes, sir.

Q. And now I am wondering if you know how much gas—would you say—let's put it this way. Would you say that Pennzoil Producing Company produces as much as four million cubic feet of gas annually that goes into the inter-state line, the black line, that is four million MCF?

A. That is four billion——

Q. Four billion MCF.

A. Well, I don't know how we have operated, we operated as we needed it and I don't know what the break is between the inter and the intra purchases from the Pennboil Producing Company in the Lirette—roughly I would say we should have taken, probably about twelve or fifteen billion from it during the year but I do not have the disposition here with me of that gas between those two meter stations.

Q. Would you agree that it is more gas than this gas shown here by the asterisk, the two million, nine hundred twenty thousand, MCF and the one million, ninety-five thousand MCF?

A. I am not sure, I don't have the figures of that.

Q. Do you have the figures here with you?

A. No, sir, I do not have the figures.

Q. Mr. Barnett, these are your figures that I am showing you. This is one of your exhibits in the proceeding up in Washington. You will notice that in the Lirette field, Pennzoil Producing Company is shown to produce seventeen million, nine hundred thirteen thousand, seven hundred and seventy MCF, is that correct?

A. Yes, sir.

Q. Into the interstate lines?

A. That is the adjusted figure.

Q. All right——

A. Just a minute, let me see what I am reading.

Q. All right. Why don't you look over that whole document there.

A. Now repeat your question.

Q. What I want to know is how much gas does Pennzoil Producing Company produce that United puts into the black line—interstate line?

A. According to this figure, which was the twelve months ending July 31, 1970, all of it went into the green line.

Q. I see.

A. If I am reading it right and I think I am.

Q. Is that the result of an adjustment that Pennzoil made?

A. Yes, sir, that was adjusted to forecast forward. To prepare these cases, we take the forecast forward.

Q. What was the actual flow into the interstate, or black line?

A. The actual flow into the black line was eight billion, two hundred seventy-two million and into the green line was six billion, five hundred ninety-three million.

Q. All right, now after consulting your records there, are you able to agree with me that Pennzoil produced more gas during the period covered by this exhibit into the interstate or black line than gas which had been shown here by the asterisks, the two million, nine twenty at Bay Marshand and the one million, ninety five at Bastian Bay?

A. According to the exhibit, we were just looking at, yes, sir.

Q. And that is United's exhibit?

A. Yes, but I don't quite have the period—I didn't identify the period for that actually—that is what was worrying me.

Q. Would you do that?

A. That was twelve months, ending July 30th, 1970.

Q. That is the same thing as this except it shows thirty one days in July, which is correct I believe.

A. Yes, sir.

Q. So it is the same period of time as shown by LP&L—Barnett #2?

A. Yes, sir.

Q. So, Mr. Barnett, to summarize what we are getting at with the questions here, will you agree with me that by your own figures, if Pennzoil United and Pennzoil Producing and United Gas decided to not have any black gas at all go into the green system, that is a supply available, at least as of the last figures, July 31 of 1970, gas available by which Pennzoil, which is wholly controlled by your parent, could see to it that enough gas was put into the intrastate or

green line so that no gas from Bastian Bay or Bay Marshand would have to be put in it?

A. I do not agree with you, no.

Q. You don't agree with me?

A. No, sir.

Q. Well, tell me why you don't agree with me.

A. Well, during the months of December, January, February and March, when it gets real cold in New Orleans, we have got to have some gas in there to keep the thing going. The figures that you are looking at and the figures on there are annual figures, the total figure, but from month to month, and period to period, we have got to keep enough gas available in New Orleans to supply the heating load and when we need gas in New Orleans to supply the heating load or any load, we have to—and we don't have it on the so-called green system—we have got to bring it from the so-called interstate system to supply the customers in New Orleans.

Q. Do you have any peak day figures that would prove that?

A. No, sir, I do not, with me.

MR. CARTER: That is all, Your Honor.

THE COURT: Any further questions of this witness?

MR. GOOCH: I have just a couple, if the Court please.

DIRECT EXAMINATION

BY MR. GOOCH:

Q. What is the name of your producing subsidiary?

A. Pennzoil Producing Company, it was formerly Union Producing Company.

Q. Does Pennzoil Producing Company have certificates granted by the Federal Power Commission?

A. Yes, sir. Pennzoil—we have contracts with Pennzoil Producing Company, just like we have with Texaco—Pennzoil Producing Company files those contracts and gets certificates with them from the FPC just like any other producer.

Q. Does it therefore become jurisdictional?

A. Yes, sir.

MR. GOOCH: I have no more questions, thank you sir.

DIRECT EXAMINATION

BY MR. HARVIN:

Q. Mr. Barnett, those figures that were in this thick volume of material over here that MR. Carter asked you about, was that a part of the evidence that you presented to the Federal Power Commission?

A. I am sure they were. I don't recall the case he had but I am sure they were the figures.

Q. You testified for some length before the Federal Power Commission?

A. Yes, sir, I testified before them.

Q. And in which of these proceedings, curtailment or——

A. I testified before them in the curtailment proceeding and the rate case proceeding and certificate proceeding.

Q. How long did you testify at the curtailment proceeding?

A. I testified—are you talking about the cross examination?

Q. Yes, sir.

A. I testified on cross about three and a half days.

Q. Being questioned by all of these intervenors?

A. They took turns at me, yes, sir.

Q. With respect to this gas that you have been questioned about, that is produced by Pennzoil Producing Company, in what general area is that located?

A. Pennzoil—we were talking about the Lirette field, which is southeast of New Orleans. I would say it is on the map but it is southeast of New Orleans and also in that field we have a focal point of other pipelines coming in, so not only do we have a field there, we have a focal point, so people speak of the Lirette point as our kind of a gathering—centralized point and we speak of Lirette as a particular field.

Q. From the point of the Pennzoil Producing Well, is there any common point where that gas is co-mingled before it is split off into the black line and into the green line?

A. Well, the producer, of course—well the producer has a line to the gasoline plant which is a common line and then it is processed at the gasoline plant and at the tailgate it is split off. It comes out into a header, which is the producers property and which is the plant's property and we connect to that header through two meter stations and

our property and our purchase and our payments begin at that point.

Q. All of that gas then, comes to a common header before it is split off into separate lines?

A. It is either—the header is either owned by the producer or by the gasoline plant. It is not owned by United Gas Pipeline Company.

Q. You were asked many questions about peak days and demands in the New Orleans area. Are you familiar with the information that was given in that regard in Mr. Echterhoff's prepared testimony?

A. Not fully, that is why I did not want to refer to it, because I wasn't fully familiar with it. I didn't want to be misquoted or misquote Mr. Echterhoff.

Q. But that testimony, you recall, does deal with that question.

A. Yes, sir.

Q. And you recall also that on peak days there, the estimate for 1971-72 winter forecasts a deficiency, does it not?

A. Yes, sir.

Q. And the same thing is true for 1972-73, there is a deficiency forecast as between the available supply and demand, is there not?

A. Yes, sir, I knew that. That is why I was trying to make the point, during those winter months we have just got to have some gas in there, period.

Q. Where it is stated here, these figures, you can see there will be a deficiency in the peak day supply for 1971-72 and 1972-73 of, what is this, five hundred eighty-nine million cubic feet per day and six hundred eighty-four million cubic feet per day respectively?

A. Yes, sir.

Q. That is if you rely on nothing but the non-certificated gas?

A. That is correct, yes, sir.

MR. HARVIN: That is all we have of this witness, Your Honor.

THE COURT: Any further questions of this witness?

MR. CARTER: I am going to, as a result of that last series of questions, I am going to have to ask Mr. Barnett to do a little drawing.

RE-CROSS EXAMINATION

BY MR. CARTER:

Q. Mr. Barnett, let's get it straight about that business of Pennzoil, the way the lines go. I am handing you a piece of yellow paper, do you have a pen with you?

A. No, sir.

Q. I am getting you a black felt-pointed pen and what I am going to do is ask you, piece by piece and step by step, to draw just a rough sketch here, the way the gas flows from the producer through the plant, from the plant through the line, where United Gas picks it up and it is separated and so forth.

A. If I can talk from a layman's standpoint and not all of the valves and all of the intermediate connections and separators and what not, I think I can.

Q. Why don't you try to do that, please, sir.

A. Now repeat what you want?

Q. On this blank piece of paper, I would like, first, for you to put down where the wells are, just put something to designate the wells. All right, that is a circle with an asterisk through it, is it not?

A. Yes, sir.

Q. All right, from the wells, where does the gas go?

A. It goes through a series of separators that are owned by the producer and it goes through a gasoline plant.

Q. All right, would you make a mark—you have got a triangle with a G in it and that is the gasoline plant and at that point—first of all, who owns that gasoline plant?

A. The gasoline plant is owned by our producer.

Q. Pennzoil Producing?

A. No, sir. Pennzoil does not own the plant. The plant is owned by—I believe that plant is owned by Humble and they in turn have some arrangement to process Pennzoil's gas.

Q. All right, at that point, then Pennzoil Producing Company's gas has come out of the ground, through some separators and into the gasoline plant owned by Humble, is that correct?

A. Right.

Q. All right, now after Humble has taken out whatever hydrocarbon or whatever you all take out of it, then what do you do—where does it go then?

A. Well, as part of the facilities in the gasoline plant,

they come out through a series of separators and they come out into a header which is in the plant yard, next to the gasoline plant.

Q. Well, what is a header?

A. That is a short connection that comes out to kind of bring it into the line, you come out with your main line and it is kind of a "T", it is a short "T" is really what it is.

Q. Just like you have got it drawn there, just a short "T". All right, and then what happens when it goes——

A. And that is the producer and we make a contract with the producer to buy the gas at that point, right there, and we put in a gas purchase meter station.

Q. All right, and you are making that a little box sitting on a pedestal there.

A. No, I am making it like a little box with a little line to it.

Q. All right.

A. Then that is our property, that is United Gas Pipeline's property, beginning right there.

Q. All right, where you put that arrow.

A. And then that gas is brought, and that is where we pay for it, and then the gas moves right on into New Orleans.

Q. All right, now suppose though, that you wanted to move in the black, or interstate line.

A. Well, then we would have a purchase point at this point right here which is on the—we would have another meter right here and that is the meter station where we account for the gas. We make our reports and we account for that on the FPC rate schedule.

Q. Yes, sir.

A. And we buy the gas at that point——

Q. Let's call it interstate.

A. Well, let's call it Mobile.

Q. Mobile, all right, and that is out of this meter——

A. That is out of this meter and United Gas Pipeline Company's point of ownership begins at that point right there.

Q. Right where that arrow shows?

A. In other words, our point of ownership is on the inlet side of the gas purchase meter station.

MR. CARTER: Your Honor, I want to identify that drawing as LP&L-Barnett #3. That is all of the questions that I have.

MR. GOOCH: We have no questions, Your Honor.

THE COURT: You are excused, Mr. Barnett.

MR. CARTER: I would like to offer LP&L-Barnett #1, 2, and 3, Your Honor.

THE COURT: Any objections? Admitted.

Thereupon the exhibits marked LP&L-Barnett #1, 2, and 3 were received into evidence and filed with the clerk of court.

MR. CARTER: Your Honor, I believe that is all we wish to present on the jurisdiction. Of course, we have written no memorandum of brief in this matter, with respect to a number of the things that have been brought up today and we, of course, will want to do that at some time here.

THE COURT: Could I have other counsel give voice to what they would like to do as far as giving memorandums, there has been a good bit of testimony taken.

MR. HARVIN: Your Honor, because of the fact that we are under a restraint, we took pains to be sure to submit a brief today and we would be most appreciative of the Court for taking this matter on in a hurry as you did, and we ask only, if time is going to be given for any further briefs from the parties, the matter has been pretty well briefed by the presentation earlier, before Judge Dawkins, as well as the Court of Appeals, that it be done again and accelerated in view of the Court of Appeals instructions that this matter be expedited. If we are going to get anything more in, we will get it in right away, but I think we are standing on our briefs that have been submitted today.

THE COURT: I think that the Court will do this since the causal situation is not going to make it any longer, that the Court will allow all parties until Monday, the 14th to file any briefs.

MR. CARTER: Your Honor, when you say, have your briefs in, you are referring to having it in the mail or being delivered to the Court?

THE COURT: I would like to have it delivered by that time.

MR. CARTER: All right, fine.

THE COURT: In other words, that is a Monday so you will have to put it in the mail either Friday or Saturday.

MR. CARTER: We will have anything delivered by Monday——

THE COURT: And if you would, in this particular instance, I don't usually accept filings here but in this particular instance, you can file it to me direct. It would be Post Office Box 990 in Alexandria. This and any further communications regarding this matter.

MR. CARTER: Your Honor, just one last piece of unfinished business and that is on the extracts of the Texaco contracts. May I suggest that we just file them LP&L-Texaco #1 and LP&L-Texaco #2?

THE COURT: That will be acceptable.

MR. CARTER: And we will supply the opponents at the same time we do the Court.

THE COURT: Right, sir.

MR. GOOCH: I have two points, I just want to make it certain that I have made a formal offer of every exhibit, offered and marked by the Federal Power Commission with the exception of the Belvin deposition, we offer all of them into evidence.

THE COURT: I believe that would be exhibits #1 through 21.

MR. GOOCH: I believe that is right.

THE COURT: Accepted.

MR. GOOCH: When I was marking the exhibits, I neglected to mark one and it really doesn't have to be an exhibit, but I would like to mark it—the Monsanto company also is appealing the action of the Federal Power Commission in connection with the curtailment case and I felt obliged to call that fact to the attention of the Court and I have a certification from the Secretary pointing out that an aspect of the curtailment case that has been taken to the United States Court of Appeals for the District of Columbia circuit and I have a Power Commission brief that will be filed and if I may I would like to mark that as an exhibit and include it in the record of the case.

MR. CARTER: Your Honor, I think for the same limited purpose that Mr. Gooch stated, when he made his original offer of these other documents, then we have no objection.

MR. GOOCH: Well, that is exactly right. The only thing, the brief is a brief on the law and it is no different than what we have filed or will file in this case.

THE COURT: Accepted with the limitation cited by Mr. Carter. Is there anything further?

Thereupon the exhibits marked Commission #1 through #21 and the brief were received into evidence and filed with the clerk of court.

THE COURT: Court is adjourned.

Certificate

I, Jackie D. Weaver, United States Court Reporter, United States District Court, Western District of Louisiana, do hereby certify that the above and foregoing 181 pages of typewritten matter constitute a true and correct copy of proceedings had at the time and place as hereinbefore set forth on page 1 hereof.

In Witness Whereof, I have hereunto affixed my signature at Alexandria, Louisiana, this 5th day of June, A.D., 1971.

Jackie D. Weaver
/s/ Jackie D. Weaver

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of
UNITED GAS PIPE LINE COMPANY } Docket No. RP 71-29

STATEMENT OF POSITION ON BEHALF OF
LOUISIANA POWER & LIGHT COMPANY

Pursuant to the order of the Commission issued December 10, 1970, Louisiana Power & Light Company (LP&L) files this statement of position on the record of this proceeding supplementing and augmenting its statement of position filed heretofore with the Commission.

Louisiana Power & Light Company asserts as a peremptory matter that the Federal Power Commission is without authority or jurisdiction under the provisions of the Natural Gas Act (and particularly Section 1(b) thereof) to interpret, regulate, apply or otherwise administer the provisions of the contracts for the sales of natural gas by United Gas Pipeline Company (United) to Louisiana Power & Light Company for use in the generation of electricity at the Sterlington and Nine Mile Point generating stations of LP&L and in particular, the Commission is without authority to implement any alleged "curtailment program" by United in this proceeding with regard to such non-jurisdictional direct sales to Louisiana Power & Light Company for industrial consumption. The Commission is similarly without authority or jurisdiction to in any way regulate or apply any such "curtailment program" with regard to the sales by United to the Nine Mile Point generating station of Louisiana Power & Light Company at Westwego, Louisiana, to the extent that such sales are sales of gas not in interstate commerce within the meaning of the Natural Gas Act.

This Statement of Position is filed without waiving or otherwise affecting the position of Louisiana Power & Light Company that United Gas Pipe Line Company has not had the contractual right in the past, and does not have the contractual right to continue to reduce deliveries of gas under the so-called "Impairment of Deliveries" clauses of its contracts with LP&L, dated February 20, 1956, as amended,

and May 6, 1968, and that the Federal Power Commission is without jurisdiction or authority over the application of such contractual provisions. Louisiana Power & Light Company further states that any curtailments by United have constituted and will continue to constitute breaches of United's contractual obligations to LP&L under said contracts, and LP&L specifically reserves all of its contractual rights and remedies, including the right to seek injunctive relief in any Court, with respect to any failure on United's part to deliver contract quantities of gas subject only to the limited and qualified stipulation covering the period from November 1, 1970 through March 31, 1971.

Louisiana Power & Light Company states that grave problems with respect to the reliability of electric power and service in the South Central area of this country and, in fact, throughout the whole eastern half of the country, will exist if the programs proposed by United are allowed by this Commission or the courts to be implemented. Reference is made to the letters to the Commission of J. Robert Welsh, Chairman of the Southwest Power Pool, dated April 22 and May 21, 1971, and of William B. McGuire, Chairman, of the National Electric Reliability Counsel, dated May 5, 1971, in this connection.

As indicated by the attachment "A" to this statement (Fuel Oil Alternate Fuel Burning Capability, dated May 20, 1970, in response to an inquiry by United in these proceedings) the use of fuel oil for the generation of electricity is strictly an emergency matter insofar as LP&L is concerned. LP&L estimates that at least five years would be required to convert its generating facilities to a point where they could be operated on a continuous basis with fuel oil, and that the cost of such conversion would range from $180,000,000 to convert for operation on 2% Sulphur No. 6 oil with sulphur removal equipment to $130,000,000 for operation on 1% Sulphur No. 6 oil with sulphur removal equipment; the cost would be approximately one-half of the above amounts without sulphur removal equipment; it is questionable as to whether applicable air quality standards would be met even with the unproven Sulphur removal equipment, and there is no question that the standards would not be met without such equipment. Such estimates do not include Sterlington Unites 3, 4, or 5 since conversion of them would require the installation of new boilers. The cost ranges from $30 to $50 per KW of generation.

Serious questions exist with regard to the availability of an appropriate grade of fuel oil for such conversion, and operation, and LP&L questions the practicability and advisability of any consideration of such an alleged "alternate" fuel in view of import problems, environmental problems and ultimate cost to the electric consumer.

With regard to the nature of the sales of electricity by LP&L to its customers, a monthly tabulation of sales for the years 1969 and 1970 is attached in thousands of kilowatt hours. Such tabulation is in response to the request of the Presiding Examiner herein of March 9, 1971. LP&L's "Commercial Sales" include sales to large apartment units for domestic users, and to other human need customers, such as schools, hospitals, office building and retail establishments. While LP&L has not been able to develop data on the ultimate use of the sales to governments and municipalities, such power is generally used for street lighting, sewage pumping, storm drainage, water plants, and other governmental services, as well as resale for domestic consumption. Similarly, it is understood that the sales for resale to rural electric cooperatives and other companies are principally used for non-industrial direct sales.

LOUISIANA POWER & LIGHT COMPANY
/s/ J. M. Wyatt
J. M. WYATT—*Senior Vice President*

Filed
June 14, 1971

—oOo—

(Title Omitted)

~~No.~~ 16,637

UNITED/PENNZOIL'S SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

As United Gas Pipe Line Company (United) and Pennzoil United, Inc. (Pennzoil) filed a brief when the case was pending before Judge Dawkins and an additional brief on May 27, 1971, they do not feel that it is necessary to file a third trial brief at this time. However, as the order of the United States Court of Appeals for the Fifth Circuit

FUEL OIL ALTERNATE FUEL BURNING CAPABILITY

May 20, 1971

Unit	Capability MW	Type of Oil	Storage Capacity Hrs. at Full Load	Mcf Equivalent Avg. Day	Mcf Equivalent Peak Day
Sterlington	333	None	None	—	—
Ninemile No. 1	74	No. 2	36	15,000	19,900
Ninemile No. 2	107	No. 2	36	21,000	28,000
Ninemile No. 3	135	No. 2	36	25,700	34,300
Ninemile No. 4	750	No. 2	36	126,000	168,000
Little Gypsy #1	244	No. 2	27	43,000	57,300
Little Gypsy #2	436	No. 2	27	75,700	101,000
Little Gypsy #3	549	No. 2	27	93,000	124,000
Buras No. 8	19	No. 2	65	4,200	5,600

Notes to Above:

As of this time none of our units are capable of operating continuously with an alternate fuel. Ninemile Point Units 1, 2, 3 and 4, Little Gypsy Units 1, 2 and 3, and Buras Unit 8 are all capable of operating on an emergency basis for periods of 27 to 65 hours at near full load with No. 2 fuel oil.

Sterlington Units 3, 4 and 5 (totalling 109 MW capacity) are not designed to be capable of conversion to fuel oil. Sterlington #6 (224 MW capacity) has no alternate fuel capacity at this time, however, construction for conversion to fuel oil as an alternate fuel is proceeding and completion is hoped for before the end of the summer of 1973. When those facilities are completed, Sterlington Unit #6 will be able to operate on No. 6 fuel containing less than 1% sulphur for not more than seven days at full load, at which time an outage will be necessary or other means used to reduce furnace deposits. Sterlington Unit #6 conversion to alternate fuel will cost 2 million dollars. An additional 8.7 million dollars will be required to convert to fuel oil containing a maximum of 1% sulphur and including sulphur removal equipment.

Conversion of all LP&L units capable of being converted to continual burning of oil containing 2% sulphur would cost at least 85 million dollars without sulphur removal equipment and an expenditure of at least 180 million

dollars would be required if sulphur removal equipment were installed.

LP&L—5/20/71

Attachment to letter of 5/20/71 to V. S. Brennan of United Gas Pipeline Company

LOUISIANA POWER & LIGHT COMPANY

Sales—1969 (MKWH)

	Direct				*Resale*			
1969	*Residential*	*Commercial*	*Industrial*	*Govt. & Municipal*	*Municipalities*	*Cooperatives*	*Other Companies*	*Total*
January	141,774	69,362	326,186	22,731	4,815	36,667	362,971	964,506
February	128,131	69,029	334,656	22,835	5,023	34,678	320,065	911,417
March	123,993	66,995	309,503	21,866	4,595	33,793	242,036	802,781
April	122,263	70,088	336,738	23,401	5,260	34,837	320,764	913,351
May	138,056	77,070	325,896	23,183	5,058	33,718	314,639	947,620
June	233,508	91,564	333,853	24,977	7,905	48,392	490,599	1,230,798
July	367,457	109,447	300,940	25,950	10,696	65,604	560,737	1,440,831
August	369,492	110,547	340,490	25,336	13,003	60,712	366,518	1,286,098
September	342,886	111,403	343,446	26,842	11,311	54,122	478,388	1,368,393
October	261,415	103,414	354,143	24,845	8,348	45,261	489,341	1,286,969
November	169,881	86,253	381,891	24,078	6,802	39,881	389,703	1,098,489
December	136,802	78,120	133,108	22,840	5,749	39,286	410,502	1,026,377
Total Sales	2,535,658	1,043,292	4,017,852	288,884	88,536	526,950	4,776,458	13,277,630

LOUISIANA POWER & LIGHT COMPANY

Sales—1970 (MKWH)

	Direct				*Resale*			
1970	*Residential*	*Commercial*	*Industrial*	*Govt. & Municipal*	*Municipalities*	*Cooperatives*	*Other Companies*	*Total*
January	159,995	80,242	368,893	22,928	5,857	42,400	265,634	1,045,949
February	147,717	77,907	338,647	23,378	5,984	42,704	404,700	1,041,037
March	132,147	75,175	339,226	21,886	5,359	36,373	408,194	1,018,360
April	133,332	77,099	371,519	22,957	6,056	38,632	194,626	844,221
May	200,391	94,038	364,851	24,045	7,546	43,726	193,379	928,176
June	255,843	103,557	362,887	25,238	9,975	52,529	227,819	1,037,848
July	366,558	119,094	358,510	26,915	11,913	66,217	383,643	1,332,850
August	379,103	119,386	380,759	27,491	13,145	67,817	372,019	1,359,720
September	396,757	123,610	368,363	27,894	12,304	67,397	451,526	1,447,561
October	319,473	117,042	337,780	23,920	8,822	48,908	370,554	1,226,449
November	171,268	93,276	360,135	23,169	6,269	41,683	258,309	954,301
December	151,397	87,793	340,080	21,242	6,282	42,775	190,592	839,161
Total Sales	2,813,981	1,168,218	4,291,609	290,975	93,712	591,161	3,811,186	13,066,833

entered May 14, 1971, directs this Court to make appropriate findings of fact and state its conclusions of law, (Order 5) United and Pennzoil feel that it is appropriate to suggest the following summary findings of fact and conclusions of law for the Court's consideration in connection with its preparation of either detailed findings of fact and conclusions of law or an opinion or memorandum of decision as contemplated by Rule 52 of the Federal Rules of Civil Procedure. The suggested findings and conclusions are:

Suggested Findings of Fact

1. Louisiana Power & Light Company (LPL) is an electric utility company which operates generation, transmission and distribution facilities, including the Sterlington generating station (near Monroe, Louisiana) and Nine Mile Point generating station (near Westwego, Louisiana.)

2. LPL, Arkansas Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc. constitute an interconnected electrical utility system known as the Middle South System. In addition, LPL is interconnected on an electric transmission grid known as "South Central Electric Companies" with eleven large electric utility companies in the south-central area of the United States.

3. United, a "natural gas company" as defined in § 1(b) of the Natural Gas Act (the Act), 15 U.S.C. § 717(b), is engaged in the transmission of natural gas through transmission lines located in the States of Louisiana, Texas, Mississippi and northward and eastward into the midwestern and eastern part of the United States.

4. United has entered into industrial sales contracts with LPL covering a portion of LPL's gas requirements at the Sterlington and Nine Mile Point stations.

5. United proposes to curtail deliveries of gas to its industrial customers, including LPL, and to all industrial customers on the systems of the pipelines who buy from United. United is now in fact curtailing all such industrial customers except LPL, and would be curtailing LPL were it not for the restraining order which has been in effect since May 1, 1971.

6. United's asserted justification for these curtailments is the shortage of natural gas caused in part by the increas-

ing demand for natural gas by consumers and declining rates of additions to natural gas reserves; these factors are matters of common knowledge which have been judicially noticed by the Fifth Circuit as recently as last year in the *Southern Louisiana Area Rate Cases. Austral Oil Co. v. Federal Power Com'n*, 428 F. 2d 407 (5th Cir.), *cert. denied*, 400 U.S. 950 (1970).

7. United has made application to the Federal Power Commission (Commission) for an order approving its curtailment program; administrative proceedings are currently pending before the Commission under FPC Docket No. RP71-29, FPC Docket No. R-418 and FPC Docket No. CP71-89 in which the Commission is currently considering United's proposed curtailment program either directly or indirectly.

8. FPC Docket No. RP71-29 was instituted on October 26, 1970 by United's filing of a proposed curtailment plan covering the winter heating season of 1970-71 (November 1, 1970 to March 31, 1971). On December 29, 1970 pursuant to the agreement of all but one or two of some fifty parties to that proceeding, the Commission approved United's winter curtailment program. LPL is a party to that proceeding and agreed to the order of December 29, 1971. On February 22, 1971, United filed a supplemental petition in FPC Docket No. RP71-29 in which it sought approval of a proposed curtailment during the summer of 1971 (April 1, 1971 to October 31, 1971). Since the filing of United's supplemental petition extensive evidence has been taken in this proceeding; the transcript now totals some 2,200 pages. Testimony from the intervenors and the Commission's Staff was filed on May 24, 1971. United's rebuttal testimony was due on June 11, 1971; the hearing is scheduled for June 27, 1971.

9. FPC Docket No. R-418 was initiated by the Commission's Order No. 431 on April 15, 1971. Order No. 431 directed interstate pipelines to take steps, including filling storage fields, in order to insure capacities to meet the heating season demands for the winter of 1971-72 (November 1, 1971 to March 31, 1972). The Order further directed the pipelines to file plans within thirty days indicating the way in which the pipelines proposed to meet the winter heating season demands. United filed its response on May 17, 1971; the Commission docketed the response under FPC No. RP71-129 and then on May 28, 1971 ordered

Docket No. RP71-120 consolidated for hearing and decision with Docket No. RP71-29. That order provided that persons who are parties to the proceeding in Docket No. RP71-29 will be deemed to be parties in the consolidation and need not file to intervene in Docket No. RP71-120. The order of May 8, 1971 also directed United to file evidence in support of its curtailment plan covering the winter season of 1971-72 by June 14, 1971. The remainder of the schedule was left to the presiding examiner.[1]

10. FPC Docket No. CP71-89 was instituted by United on October 1, 1970 in response to the Commission's letter of September 17, 1970, for the purpose of seeking certification of sales, facilities, and services in the New Orleans area including the sale by United to LPL at Nine Mile Point. Curtailment issues may be involved indirectly in this proceeding because of the requirement that the Commission consider the impact on existing certificated service in connection with its action on new certificate applications. United's direct testimony was filed on May 24, 1971. Testimony from the Commission staff and the intervenors was due on June 7, 1971. The hearing in this proceeding was scheduled to begin on that same day; presumably it did.

11. LPL is a party to the curtailment proceeding before the Commission and is urging in that proceeding that the Commission does not have jurisdiction to direct curtailment of deliveries under the industrial sale contracts with United at Sterlington and Nine Mile Point.

12. LPL is also a party to the certificate proceeding and is urging in that proceeding that the Commission does not have jurisdiction because, according to LPL, the system which serves the New Orleans area, including Nine Mile Point is an almost wholly intrastate system.

13. The deliveries at Sterlington are admittedly from interstate supplies, and the sale, service and facilities at Sterlington have been certificated by the Commission.

14. LPL urges before this Court the same reasons for lack of Commission jurisdiction over curtailment and certificate proceedings that it is urging before the Commission.

15. Despite LPL's contentions to the contrary, the cur-

[1] United, by letter dated June 11, 1971, copies of which were furnished to all parties, transmitted the Commission's order of May 28, 1971 to the Court because it supplements the schedule outlined to the Court at the hearing on May 27, 1971.

tailment proceedings and the certificate proceeding are not rate proceedings. Although the Commission is required by the existing authorities to consider price as one factor in the certificate case, this does not transform that proceeding into a rate proceeding. Likewise, although United has proposed that curtailments for the winter of 1971-72 be based in part on the price it receives for gas, this does not transform the curtailment proceeding into a rate proceeding.

16. The case is before the Court pursuant to the order of the Fifth Circuit entered on May 14, 1971 directing that a hearing be held on jurisdiction and on such other preliminary matters as might properly be considered. The parties brought no matters other than the jurisdictional question to the Court's attention; accordingly, the only issue before this Court is jurisdiction.

Conclusions of Law

1. The Commission should be allowed to make the initial determination respecting its jurisdiction if there is an arguable basis in fact or in law under which it may have jurisdiction. *Federal Power Com'n v. Arkansas Power & Light Co.*, 330 U.S. 802 (1947), rev'g. 156 F. 2d 821 (D.C. Cir. 1946); *Union Oil Co. of California v. Federal Power Com'n.*, 236 F.2d 816, 818, 819 (5th Cir. 1956), *cert. denied*, 352 U.S. 969 (1957); *Lone Star Cement Corp. v. FPC*, 339 F. 2d 505, 511 (9th Cir. 1964). This need for initial agency determination of its jurisdiction is particularly compelling when the jurisdictional issue brought before a Court is in the process of litigation at the agency. *Marine Engineers v. Interlake Co.*, 370 U.S. 173 (1962).

2. There is no dispute that Congress has given the Commission exclusive jurisdiction of the issues presented in United's certificate proceeding, FPC, Docket No. CP71-89.

3. Curtailment issues are also matters peculiarly within the province of the Federal Power Commission. *Panhandle Pipe Line Co. v. Com'n.*, 332 U.S. 507, 523 (1947); *Panhandle Eastern Pipe Line Co. v. FPC*, 232 F. 2d 467 (3rd Cir.), *cert. denied* 352 U.S. 891 (1956); *Panhandle Eastern Pipe Line Co. v. Michigan Consolidated Gas Co.*, 177 F. 2d 942 (6th Cir. 1949); *Michigan Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784 (6th Cir. 1949); *Panhandle Eastern Pipe Line Co.*, 9 FPC 1330 (1950); *Panhandle Eastern Pipe Line Co.*, 8 FPC 1339

(1949); *Panhandle Eastern Pipe Line Co.*, 7 FPC 984 (1948); *City of Detroit v. Panhandle Eastern Pipe Line Co.*, 6 FPC 196 (1947).

4. No different result obtains because the exercise of curtailment jurisdiction may involve impairment of deliveries under industrial sale contracts. The Commission may allocate excess interruptible gas between industrial and resale customers, *Panhandle Eastern Pipe Line Co. v. Federal Power Com'n.*, 232 F. 2d 467 (3rd Cir.), *cert denied*, 352 U.S. 891 (1956), and may reallocate capacity from industrial customers to resale customers if the remaining service to the industrial customers meets the test of adequacy set out in § 7(a) of the Act, 15 U.S.C. #717f(a). *Granite City Steel v. Federal Power Com'n.*, 320 F. 2d 711 (D.C. Cir. 1963). Each of the Commission decisions cited in the preceding conclusion (United Sugg. Concl. No. 3) involved curtailment orders which allocated deliveries of gas among all of Panhandle Eastern's customers, both industrial and resale. Further, the Commission's decision in *South Georgia Natural Gas Co.*, 23 FPC 795, 797 (1960), alludes to the Commission's continuing jurisdiction to review any material change in certificated service.

5. The deliveries at Sterlington are undisputedly deliveries from an interstate gas supply which have been certificated by the Commission. There is evidence before this Court and the Commission that the system which serves the New Orleans area including Nine Mile Point is partly interstate and partly local in nature; the Commission is currently exploring its certificate jurisdiction at Nine Mile Point in FPC Docket No. CP71-89. Under *Florida Parishes, Louisiana Public Service Commission, v. Federal Power Com'n.*, 359 F. 2d 525 (5th Cir.), *cert. denied*, 385 U.S. 833 (1966), such deliveries from a commingled interstate and intrastate gas stream are subject to the Commission's jurisdiction. The amount of interstate gas reaching Nine Mile Point may vary from time to time but this Court has no warrant, on this record, for saying that the Commission cannot make a factual showing which would render the facilities jurisdictional or for concluding that such a jurisdictional conclusion by the Commission would be frivolous. *Lone Star Cement Corp. v. Federal Trade Commission*, 339 F. 2d 505, at 511 (9th Cir. 1964).

6. The contention by LPL that even when some interstate gas is mixed with local gas in the New Orleans area all the

gas is still produced and consumed wholly within the State of Louisiana is likewise unpersuasive. Similar arguments were made by pipelines which made sales for resale entirely within the boundaries of a single state, *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U.S. 682 (1947), and by producers which made sales for resale entirely within one state. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954) (First Phillips). Both the pipeline sales and producer sales were arguably exempt under § 1(b) of the Act for this reason; in both cases the Supreme Court concluded that the Commission had jurisdiction.

7. Under *Transco, Federal Power Com'n v. Transcontinental Gas Pipeline Corp.*, 365 U.S. 1 (1961), the price factor must be considered by the Commission in connection with action on new certificate applications. This does not transform a certificate case into a rate case. *Panhandle Eastern Pipe Line Co. v. Federal Power Com'n.*, 232 F. 2d 467, 471 (3rd Cir.), cert. denied, 352 U.S. 891 (1956). The Commission may or may not be able to develop a factual and legal basis for consideration of price factors in curtailment contexts, but this Court should not deny the Commission an opportunity to develop such an argument. *Lone Star Cement Corp. v. F.T.C.*, 339 F. 2d 505, 511 (9th Cir. 1964).

8. Under *Lone Star Cement*, so far as the need for agency expertise is concerned, the key is that facts such as those involved in the questions of curtailment and certificate jurisdiction here, can only be elicited in an administrative proceeding. Some 2,200 pages of evidence have already been taken in the curtailment proceeding alone. Curtailment hearings are scheduled to begin again on June 27, 1971; the certificate proceeding hearings presumably began on June 7, 1971. It makes no sense to duplicate the Commission's hearings. Since the facts are being developed before the Commission it is only good sense that the Commission be the first to evaluate them. Exhaustion is particularly favored when the very question at issue is in the process of litigation before the agency. *Marine Engineers v. Interlake Co.*, 370 U.S. 173 (1962). The complexity of these issues also strongly supports initial Commission resolution. The existence and extent of the natural gas shortage about which so much has been written, the impact of year long curtailment on electrical reliability for which the Commis-

sion also has responsibility under the Federal Power Act, 16 U.S.C. § 791a., *et seq*, the formulation of a program to protect residential users of both gas and electricity, are all questions which require the Commission's expertise and which under the decisions, the Commission should decide initially. In the words of the Supreme Court in *Marine Engineers v. Interlake Co.*, 370 U.S. 173 (1962), the Commission's decision may not be the last word, but it must assuredly be the first.

9. All irreparable harm really means in the context of this case is whether there is an adequate remedy available by way of appeal to LPL if the Commission should decide that it has curtailment and certificate jurisdiction at both Sterlington and Nine Mile Point. *Lone Star Cement Corp. v. Federal Trade Commission*, 339 F. 2d 505, at 511 (9th Cir. 1964). However, even if this Court were required to consider factors such as those set out in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921, 925 (D.C. Cir. 1958) the Court is not persuaded that LPL has demonstrated irreparable harm. LPL has known since January 8, 1971 that curtailment might be required during the summer. It has known the details of the curtailment proposal for the summer since February 22, 1971. LPL did not file suit until March 31, 1971; even after that date it represented to the investing public in a registration statement filed with the Securities & Exchange Commission (Commission Ex. No. 21):

> "After June, 1971 the company expects to be able to offset any foreseeable gas curtailment by burning oil."

10. Despite the assertion of lack of Commission jurisdiction, LPL must exhaust its administrative remedies at the Commission before seeking judicial relief. It may not interfere with the Commission's proceedings now, but must wait, until there has been a proceeding before the Commission, a record adduced and an order issued. *Union Oil Co. of California v. Federal Power Comm.*, 236 F. 2d 816 (5th Cir. 1956), *cert. denied*, 352 U.S. 969 (1957).

11. Under these circumstances, this Court does not have jurisdiction of this case; it should be dismissed for lack of jurisdiction and the restraint previously imposed on United should end.

/s/ WILLIAM C. HARVIN
William C. Harvin
Wm. R. Choate
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Filed
June 15, 1971

(Title Omitted)

No. 16,637

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NAUMAN S. SCOTT, JUDGE:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an injunctive proceeding brought by Louisiana Power & Light Company (LPL) against defendants United Gas Pipe Line Company (United) and Pennzoil United, Inc. (Pennzoil) to restrain and enjoin the defendants from curtailing the supply of gas to plaintiff's Sterlington and Nine Mile Point generating stations in Louisiana and ordering defendants to deliver natural gas to plaintiff in accordance with the provisions of the current contracts between LPL and United.

LPL is a Florida corporation having its principal place of business in the State of Louisiana and is a "public utility" within the meaning of the Federal Power Act, 16 U.S.C. 791(a) *et seq.* and is the owner and operator of the Sterlington and Nine Mile Point electric generating plants previously mentioned.

Pennzoil and its wholly-owned subsidiary, United, are Delaware corporations having their principal place of business in the State of Texas. United is engaged in the transmission of natural gas through transmission lines located in states including Louisiana, Texas, and Mississippi and also delivers to interstate pipe line companies for resale. United has been furnishing natural gas to LPL at both the Nine Mile Point Station and the Sterlington Station under contract for many years.

JURISDICTION

LPL asserts that this Court has jurisdiction under 28 U.S.C. 1332 because this is a civil action in which the matter in controversy exceeds the sum or value of $10,000 and is between citizens of different states.

THE ISSUE

Pennzoil, United and the Intervenor, Federal Power Commission (FPC) dispute this Court's jurisdiction and have filed motions to dismiss on the contention that this matter involves a proceeding (curtailment of natural gas) which is presently before the FPC, that LPL is an active participant and a party to these proceedings before the Commission, and that the FPC has exclusive jurisdiction under Sections 4(b), 5(a), and 15 of the Natural Gas Act [15 U.S.C. 717(c), 717(d), and 717(o)].

FINDINGS OF FACT.

1. United has supplied gas to LPL's Sterlington Station under contracts which include a provision entitled "Impairment of Deliveries" as follows:

> "In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers and public utility power plants using gas for generation of

electricity which is sold to domestic consumers shall first be supplied by Seller, and the remaining available gas shall be prorated by Seller among its other consumers."

2. United has supplied gas to LPL's Nine Mile Point Station under contracts containing provisions entitled "Impairment of Deliveries" as follows:

"Buyer specifically recognizes the fact that Seller delivers gas to gas utilities for resale to domestic consumers and to other industrial consumers. In the event a shortage of gas renders Seller unable to supply the full gas requirements of all its consumers, then it is mutually agreed that the gas requirements of gas utilities selling gas to domestic consumers shall first be supplied by Seller and next the gas requirements of public utility power plants (including plant of Buyer) using gas for generation of electricity which is sold to domestic consumers, shall be supplied, and if Seller does not have sufficient gas to supply all of the requirements of said power plants, then said requirements shall be supplied ratably. The remaining available gas supply shall be prorated by Seller among its other consumers."

3. It is conceded that LPL is an industrial consumer and utilizes the gas delivered to it to generate the electric power at its Sterlington and Nine Mile Point Stations and not for the purpose of resale.

4. All gas delivered by United to the Sterlington and Nine Mile Point Stations is produced in Louisiana. All deliveries of gas to the Sterlington Station are interstate gas. Deliveries of gas to the Nine Mile Station are made through the "Green" pipe line which is located entirely within the State of Louisiana. The great bulk of the gas in the "Green" line is intrastate gas. However, some gas is dumped into the "Green" pipe line from the "Black" pipe line. This is interstate gas so there is a commingling of intrastate and interstate gas in the "Green" pipe line. An application is presently pending before the Federal Power Commission (RP 71-89) to certify the "Green" pipe line.

5. United filed with the FPC on October 26, 1970, a petition for a declaratory order to curtail gas deliveries during the winter months (November 1 to April 1) on a

ratable basis and in the following order: (1) gas used for industrial purposes, including gas used to generate electricity which in turn is applied to industrial uses, (2) gas used to generate electricity which is consumed by domestic customers, and (3) gas used by domestic consumers. United alleged that the curtailment was made necessary because the gas supply was insufficient to meet its contract requirements. Attached to the petition are exhibits including exhibits showing the United customers affected by the proposed curtailment, as follows:

Jackson Area

Industrials	6 customers
Power Plants	4 customers
Pipelines	2 customers
City Gates	1 customer

Mobile-Pensacola Area

Industrials	17 customers
Power Plants	2 customers
City Gates	3 customers

Shreveport Area

Industrials	5 customers
Power Plants	1 customer
Pipelines	6 customers
City Gates	2 customers

New Orleans Area

Industrials	4 customers
Power Plants	2 customers
City Gates	2 customers

Lafayette Area

Industrials	2 customers
Power Plants	1 customer

These are the parties (customers) affected by the FPC proceeding RP 71-29 who are not parties to this suit.

6. LPL filed its petition to intervene in RP 71-29 on

November 25, 1970 stating the "impairment of deliveries" articles of its contracts with United. It also stated its proposed curtailment violated these contracts; that the FPC did not have jurisdiction over United's sales to LPL because they constitute "direct sales" which are exempt under Section 1(b) of the Natural Gas Act and requests to participate in the hearing without waiving these objections. (FPC Exhibit 3, Item 5.)

7. The FPC approved United's curtailment program for the 1970-71 winter season by order in FPC Docket No. RP 71-29 dated December 29, 1970 (FPC Exhibit 3, Item 7.). This order was issued as a result of the settlement between the parties, including LPL.

8. United filed a supplemental petition in RP 71-29 on February 22, 1971 for the extension of its curtailment program from April 1, 1971 through October 31, 1971 (FPC Exhibit 3, Item 3.). The record does not disclose the number of (sic) identity of intervenors, including LPL, who intervened prior to November 25, 1970 in RP 71-29, however, an order was issued March 10, 1971, permitting the intervention of Aluminum Company of America, Boise Southern Company, Container Corporation of America, Marquette Cement Manufacturing Company, National Gypsum Company, New Jersey Natural Gas Company, Scott Paper Company, Transcontinental Gas Pipeline Corporation and United Gas, Inc., and on April 12, 1971 an order issued permitting the intervention of the City of Pensacola, Florida, et al., Clarke-Mobile Counties Gas District, General Services Administration, Northern Illinois Gas Company and Mississippi Public Service Commission (FPC Exhibit 3, Items 9 & 10.)

9. LPL has not denied United's assertion that its supply of gas is inadequate to meet its present and impending gas delivery commitments. It has, in fact, agreed to the curtailment approved in the order of December 29, referred to in Finding 7 above. The fact that the Natural Gas Transmission Industry has recently experienced a decline in the ratio of crude natural gas reserves to annual volume of consumption caused in part by the increasing demand for natural gas by customers and the declining rate of additions to the natural gas reserves has been judicially noticed by the Fifth Circuit. *Austral Oil Co. v. Federal Power Comm'n.*, 428 F. 2d 405 (5th Cir.) Cert. Denied, 400 U.S.C. 950 (1970) (Southern Louisiana Area Rate Cases.)

10. FPC Order No. 431 directed interstate pipe lines, including United, to take steps, including filling storage fields, in order to insure capacities to meet the heating season demands for the winter of 1971-72 (November 1, 1971 to March 31, 1972). The Order further directed the pipe lines to file plans within thirty days indicating the way in which the pipe lines proposed to meet the winter heating season demands. United filed its response on May 17, 1971; the Commission docketed the response under FPC Docket No. RP 71-120 and then on May 28, 1971 order Docket No. RP 71-120 consolidated for hearing and decision with Docket No. RP 71-29. That order provided that persons who are parties to the proceeding in Docket No. RP 71-29 will be deemed to be parties in the consolidation and need not file to intervene in Docket No. RP 71-120.

11. LPL has alleged (Complaint Paragraph 17) that the proposed curtailment by United could ultimately effect a "black-out" or "brown-out" which, under certain circumstances, could cover an area as large as the whole State of Louisiana, or, indeed, a several-state area such as occurred during the notorious "northeast black-out" in 1965. The record is bare of any evidence to support this allegations.[1] In fact, in a registration statement filed by LPL

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[1] Mr. J. M. Wyatt, Vice President of LPL, testified as follows when cross examined by Mr. Gooch, representing the FPC:

BY MR. GOOCH:

Q. All right, sir, now let's look under such things as litigation and regulations in the registration statement filed by the SEC. Mr. Carter has just said that they were not going to assume they would lose any suits. Would you show me anywhere in this registration statement filed in April, where Mr. Carter even disclosed to the public that there was a suit pending which could cause Louisiana Power and Light Company to suffer brown outs and black outs if this allegation were true?

A. If I understand your question, I don't see why it would be necessary to notify, because there was nothing involved here that would cause brown outs or black outs on this suit.

Q. Nothing involved in the suit?

A. In the suit that I am looking at here, if I understand your question.

Q. My question is—is the suit that we are here in Court for today, do you see that disclosed anywhere, to the public, that it is pending?

A. No, it is not in here.

Q. All right. Now, would you please look at the date of this certificate?

A. Yes.

Q. Will you tell the Court what this is?

A. May 19, 1971.

Q. Are you aware of the filing with the SEC that would either call to the attention the pendency of this suit to those who may be interested in pur-

with the Securities and Exchange Commission on February 19, 1971, the following statement was made:

> "FUEL SUPPLY. The Company's primary fuel is natural gas. Two of the Company's three major generating stations are outfitted to burn oil as a standby fuel, and the third station is presently being modified to allow the burning of oil as a standby fuel and this modification is scheduled for completion by June, 1971. The Company has firm contracts for an adequate supply of gas for all generating capacity which is or will be operational prior to 1974 (3404 MW), which contracts have various expiration dates from 1978 to 1993. During the winter of 1970-71 gas was curtailed to some extent by one supplier who supplies gas to approximately 550 MW of generating capability. After June 1971 the Company expects to be able to offset any foreseeable gas curtailment by burning oil. The supply of fuel for generating units that will become operational in 1974 and thereafter is being negotiated at this time."
>
> FPC Exhibit 21.

12. On March 31, 1971, LPL although it was an active participant in the curtailment proceeding before the FPC, filed its complaint in this Court, seeking to enjoin United's curtailment program insofar as it affected LPL's Sterlington and Nine Mile Point Stations. The trial Court, after considering the pleadings of LPL and the briefs and arguments of its counsel granted a Temporary Restraining Order on April 27, 1971.

13. On April 28, 1971, the FPC intervened and filed a Motion to Dismiss for lack of subject matter jurisdiction. United-Pennzoil, on April 29, 1971 filed its Motion to Dismiss.

14. The Court considering the additional pleadings then before it, dissolved the temporary restraining order on April 29, 1971, and dismissed the case for lack of jurisdiction. LPL filed a Notice of Appeal and moved for a stay order which the Court refused. The matter is now before this Court on an Order of the Fifth Circuit Court of

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chasing Louisiana Power and Light securities or reporting any change in your fuel oil situation subsequent to May 12, 1971?'

A. I am not aware of it." (Tr. p. 103).

Appeals dated May 14, 1971 vacating the trial Court's judgment of dismissal and remanding the case to the District Court for an expedited hearing on the jurisdictional issue and such other preliminary issues as might be properly raised.

15. The original trial judge having recused himself, the matter was assigned to this Court for hearing and a full evidentiary hearing was conducted on May 27, 1971.

Conclusions of Law

LPL seeks an injunction restraining and enjoining United and Pennzoil from curtailing the supply of gas to the Sterlington and Nine Mile Point generating stations of LPL in breach of United's contracts with LPL, and ordering said companies to deliver natural gas to LPL in accordance with the provisions of said contracts.

LPL is not entitled to injunctive relief unless it clearly establishes that it is threatened with irreparable injury. It alleges that its Sterlington Station has no alternative source of energy (Complaint Paragraph 17), and that the implementation of the curtailment might result in an extensive "Brown-out" or "Black-out" (Complaint Paragraph 16). LPL has failed to establish irreparable injury (Finding of Fact No. 11) and, therefore, is not entitled to injunctive relief. However, the Court does not choose to rest judgment solely on these grounds, since the Court of Appeals has directed that a specific finding should be made on the jurisdictional issue.

LPL forcefully contends that this Court has primary jurisdiction and that the FPC lacks jurisdiction because (1) the gas delivered to the Nine Mile Point Station is "interstate gas" not subject to the jurisdiction of the FPC and (2) direct sales such as the sales from United to LPL are exempt from the jurisdiction of the Commission under the provisions of Section 1(b) of the Natural Gas Act (15 U.S.C. 717).

It is not clearly established by the record that the gas delivered to the Nine Mile Point Station is "interstate gas", since some "interstate gas" is dumped into the system which supplies the Nine Mile Point Station (Findings of Fact No. 4). The determination of this question is within the fundamental jurisdiction of the FPC, requires the expertise of that agency and is presently pending before

that agency in Docket No. RP 71-89. The same problems were properly disposed of in the Florida Parishes cases, In the Matter of United Gas Pipe Line Company, Docket No. CP62-161, 30 FPC 560, affirmed on appeal, sub nom., *Louisiana Public Service Commission et al. v. Federal Power Commission, et al.*, 359 F. 2d 525, cert. denied, 385 U.S. 833, 17 L. Ed. 68, 87 S. Ct. 73.

LPL's second contention is predicated on a finding that the question at issue is the violation of provisions of its direct sales contract with United. However, United's application to the FPC in RP 71-29 is couched in terms of a curtailment proceeding (FPC Exhibit 3, Item 1). The exhibits and testimony pertain to volumes of gas—supply and delivery. It seems fairly obvious that if the Court required delivery of the full gas contract commitment to LPL, the gas supply available to United's other customers would be reduced and the curtailment of gas supply to other customers would be proportionately affected. Thus, all of United's customers have an interest, including more than 50 intervenors in RP 71-29. A cursory examination of the testimony and the exhibits produced at the hearing before this Court on May 27 will demonstrate the complexities and the technical nature of the matters involved in United's application and the special expertise required to resolve it. This is a curtailment proceeding. The proposed curtailment program certainly affects deliveries to United's customers under direct sales contracts such as LPL. However, this is a collateral effect of the curtailment and does not necessarily convert it into an attempt by the FPC to exert jurisdiction over such direct sales contracts.

The threatened irreparable injury alleged by LPL (possible "brown-out" or "black-out") is related solely to the volume of gas delivered. There is no proof that LPL actually requires its full contract commitment of gas to avoid this consequence. It received less than contract commitments during the winter months of 1970-71 without experiencing such injury. This Court cannot assume, especially in an injunction proceeding, that the full contract commitment of gas is required by LPL to avoid its alleged injury. The injunction could not be granted if standby fuel, as alleged by defendants, is available. The contracts are strictly collateral to the issue before the Court.

United, Pennzoil and the FPC urge that LPL is not

entitled to judicial relief until it has exhausted its administrative remedies in the FPC. The Courts have not uniformly followed this precept. Professor Davis in his *Administrative Law Treatise*, Volume 3, Section 20.03, Page 69, suggests factors which should be considered in determining whether this precept should be followed:

> "The key factors are three: extent of injury from pursuit of administrative remedy, degree of apparent clarity or doubt about administrative jurisdiction, and involvement of specialized administrative understanding in the question of jurisdiction. Unfortunately, each of these three key factors is a variable, and each often calls for a considerable amount of judgment for its proper appraisal.
>
> A workable standard probably should not go beyond a statement that each of these three factors should be weighed in determining whether or not a court should decide an issue of administrative jurisdiction without requiring exhaustion of administrative remedies. A neat word formula probably is not feasible."

As noted above, LPL has made no attempt to establish the minimum volume of gas which is required to maintain its service, or that the amount allocated to it under the curtailment program is insufficient to meet its minimum requirements. The contracts are hardly pertinent to these issues. The Court finds that LPL has not proved the extent of possible injury which might result from pursuit of the administrative remedy, that the curtailment proceedings are well within the jurisdiction of the FPC and that the expertise of the FPC is necessary for the proper consideration and disposition of the issues presented in this proceeding. LPL must exhaust its administrative remedies despite its assertion that the FPC lacks jurisdiction. *Myers v. Bethlehem Steel Corp.*, 303 U.S. 41, 82 L. Ed. 638, 58 S. Ct. 459; *Macauley v. Waterman S.S. Corp.*, 327 U.S. 540, 90 L. Ed. 839, 66 S. Ct. 712; *Federal Power Commission v. Arkansas Power & Light Co.*, 330 U.S. 802, 91 L. Ed. 1261, 67 S. Ct. 962, rev'g 156 F. 2d 821; *Union Oil Co. of California v. Federal Power Commission*, 236 F. 2d 816 (5th Cir. 1956), Cert. denied, 352 U.S. 696, 1 L. Ed. 323, 77 S. Ct. 360; and *Lone Star Cement Corp. v. Federal Trade Commission*, 339 F. 2d 505. The FPC is competent to

decide its jurisdiction and should do so. *City of Hastings, Nebraska v. Federal Power Commission*, C.A.D.C. 221 F. 2d 31; *Marine Engineers v. Interlake S.S. Co.*, 370 U.S. 173, 8 L. Ed. 2d 418, 82 S. Ct. 1237.

The motions of United, Pennzoil and the FPC to dissolve the temporary restraining order and to dismiss this suit are granted and the temporary restraining order heretofore issued on April 27, 1971 is dissolved.

Counsel for defendants, Unifed and Pennzoil and for Intervenor FPC immediately shall prepare a proper decree and obtain approval thereof, from counsel for plaintiff, LPL, in accordance with Rule 9 of this Court and present such judgment for signature as expeditiously as possible.

THUS DONE AND SIGNED at Alexandria, Louisiana, this 25th day of June, 1971.

/s/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE

Filed June 28, 1971

(Title Omitted)
No. 16,637

JUDGMENT

On the 27th day of May, 1971, this case came on for hearing directed by the U.S. Court of Appeals for the Fifth Circuit by its order entered May 14, 1971, on the jurisdictional issue and on such other preliminary issues as may properly be raised and all parties appeared by and through counsel and announced to the Court that they were ready to proceed. Thereupon, on the said 27th day of May, 1971, the hearing began and later on the same day the hearing was concluded. All parties were given until June 14, 1971 to file additional briefs, and thereafter, the Court having considered the pleadings, the evidence adduced at the May 27, 1971 hearing and the written briefs, and having filed on June 28, 1971, findings of fact and conclusions of law, in accordance with Rule 52 of the Federal Rules of Civil Procedure, and, having concluded, for the reasons stated in those findings and conclusions, that the motions of United/Pennzoil and the Commission to dissolve the temporary restraining order and to dismiss this suit should

be granted and that the temporary restraining order heretofore issued on April 27, 1971 should be dissolved; it is accordingly

ORDERED that the motions of United/Pennzoil and the Commission to dismiss this suit be and they are hereby granted and that this suit be and it is hereby dismissed; it is further

ORDERED that the motions of United/Pennzoil and the Commission to dissolve the temporary restraining order be and they are hereby granted and that the temporary restraining order heretofore issued on April 27, 1971 be and it is hereby dissolved

DONE AT Opelousas, Louisiana, this 30th day of June, 1971.

/s/ Nauman S. Scott
United States District Judge

APPROVED AS TO FORM:

Thomas W. Leigh
Theus, Grisham, Davis & Leigh
400 South Grand Street
Monroe, Louisiana 71201

Alternative Judgment
Submitted 6/30/71

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(Signed by permission of counsel)

Filed
June 30, 1971

(Title Omitted)
No. 16,637

MOTION FOR SUPERSEDEAS OR INJUNCTION PENDING APPEAL

Mover, Louisiana Power & Light Company, moves the Court to stay the enforcement of the judgment in this action, or alternatively to maintain in effect the restraining order previously granted herein and reinstated by the United States Court of Appeals for the Fifth Circuit on May 14, 1971, pending the disposition of the appeal of plaintiff to the United States Court of Appeals for the Fifth Circuit, and for that purpose to fix the amount of the bond required to be filed by Mover.

In connection with this motion, Mover shows that by order of the United States Court of Appeals for the Fifth Circuit dated May 14, 1971, this case was remanded to the District Court for expedited hearing on the jurisdictional issue and on such other preliminary issues as might properly be raised, and further directed that an expedited

hearing on the merits should be had in the event the Court should decide that it had jurisdiction.

The hearing held by this Court on Thursday, May 27, 1971, was thus limited to the jurisdictional and strictly preliminary issues and did not deal with the merits in this matter. Despite this Court's finding (finding of fact, paragraph II) that no irreparable injury has been shown by Mover, nevertheless, Mover again avers that by the curtailment proposed by defendants herein it will, in fact, suffer irreparable injury as alleged in its original and supplemental petitions heretofore filed herein.

Similarly, despite this Court's finding of fact number 9, Mover again denies United's assertion that United's supply of gas is inadequate to meet its present and pending delivery commitments.

Accordingly, Mover shows that pending its appeal, the restraining order heretofore granted herein should be continued in effect until such time as the United States Court of Appeal for the Fifth Circuit can consider and rule upon the jurisdictional issue decided by this Court.

WHEREFORE, Mover prays that an order of Supersedeas be granted herein staying the effective date of the judgment herein and continuing the restraining order in effect pending the final disposition of this matter on appeal.

Prays for all needed orders.

THEUS, GRISHAM, DAVIS & LEIGH

THOMAS W. LEIGH

By /s/ Thos. W. Leigh

MONROE & LEMANN

ANDREW P. CARTER
EUGENE G. TAGGART
CHAS. KING MALLORY

/s/ C. K. Mallory

ATTORNEYS FOR LOUISIANA POWER & LIGHT COMPANY, Plaintiff

Filed June 30, 1971

(Title Omitted)
No. 16,637

BOND FOR COSTS ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, Louisiana Power & Light Company as principal, and The Travelers Indemnity Company as surety, are held and firmly bound unto United Gas Pipe Line Company, Pennzoil United, Inc., and the Federal Power Commission in the full sum of Two Hundred Fifty and No/100 ($250.00) Dollars, to be paid to the said United Gas Pipe Line Company, Pennzoil United, Inc. and the Federal Power Commission, their successors, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors, and administrators, jointly and severally by these presents:

Sealed and dated this
30 day of June, 1971.

WHEREAS, on June 30, 1971, in an action pending in the United States District Court for the Western District of Louisiana, between Louisiana Power & Light Company as plaintiff and United Gas Pipe Line Company and Pennzoil United, Inc. as defendants, and Federal Power Commission as intervenor, a judgment was rendered against the said Louisiana Power & Light Company and the said Louisiana Power & Light Company having filed a notice of appeal from such judgment to the United States Court of Appeals for the Fifth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if the said Louisiana Power & Light Company shall prosecute its appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Court of Appeals may award against the said Louisiana Power & Light Company if the judgment is modified, then this obligation is to be void; otherwise, to remain in full force and effect.

LOUISIANA POWER & LIGHT COMPANY,
Principal

By /s/ Thos W. Leigh

THE TRAVELERS INDEMNITY COMPANY

By /s/ W. E. Leigh

Surety

Filed
June 30, 1971

(Title Omitted)
(No. 16,637

Proceedings had at Opelousas, Louisiana, before the Honorable Nauman S. Scott, United States District Judge, Western District of Louisiana, beginning at 2:15 P.M. on the 30th day of July, A.D., 1971.

(Appearances omitted)

PROCEEDINGS:

(The following proceedings were had in Chambers.)

Mr. Leigh: Stipulation: We stipulate that when plaintiffs—that if, when and if it should seek from the Court of Appeals another stay or TRO in this case, that Counsel for United Gas Pipeline Company and Pennzoil United, and Counsel for the Federal Power Commission will be given notice and ample time.

Mr. Barber: Further stipulate that in the event that any extraordinary relief is sought from the Fifth Circuit in connection with this case that ample notice and time will be given to Counsel for United and the Federal Power Commission to prepare.

Mr. Leigh: So stipulated.

The Court: Thank you.

(Proceedings concluded)

Filed
July 8, 1971

(Title Omitted)
No. 16,637

Notice of Appeal

Notice is hereby given that Louisiana Power & Light

Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the judgment entered in this action on the 30 day of June, 1971.

/s/ Thos W. Leigh
/s/ A. K. Mallory

Filed
July 9, 1971

Order granting petitions for writs of certiorari

SUPREME COURT OF THE UNITED STATES

No. 71-1016

FEDERAL POWER COMMISSION, *Petitioner*,

v.

LOUISIANA POWER & LIGHT COMPANY, *et al.*

ORDER ALLOWING CERTIORARI. Filed March 6, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, to review the judgment of the United States Court of Appeals for the Fifth Circuit in Federal Power Commission v. Louisiana Power & Light Co., et al. (No. 71-2550). The case is consolidated with No. 71-1040 and a total of one hour is allowed for oral argument.

The motion to expedite is granted, so that these cases may be briefed and argued during the present term of Court.

It is further ordered that the positions for writs of certiorari before judgment to review the opinion and order of the Federal Power Commission (FPC opinion 606) be, and the same are hereby, denied.

Mr. Justice Powell took no part in the consideration or decision of this petition and motion.

SUPREME COURT OF THE UNITED STATES

No. 71-1040

UNITED GAS PIPE LINE COMPANY AND PENNZOIL UNITED, INC., *Petitioners*

v.

LOUISIANA POWER & LIGHT COMPANY, *et al.*

ORDER ALLOWING CERTIORARI. Filed March 6, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, to review the judgment of the United States Court of Appeals for the Fifth Circuit in Federal Power Commission v. Louisiana Power & Light Co., et al. (No. 71-2550). The case is consolidated with No. 71-1016 and a total of one hour is allowed for oral argument.

The motion to expedite is granted so that these cases may be briefed and argued during the present term of Court.

It is further ordered that the petitions for writs of certiorari before judgment to review the opinion and order of the Federal Power Commission (FPC opinion 606) be, and the same are hereby, denied.

Mr. Justice Powell took no part in the consideration or decision of this petition and motion.

U.S. Government Printing Office: 1972—459-999/552